

Create Control - Data Entry

Control Number: OCR-16-000-0239 Alternate Number:

Citizen Information

Citizen/Originator: 1). Morton, Dawson - 104 Mareitta Street, tlanta, GA 32706

Constituent:

Committee: Sub-Committee:

Control Information

Status:

Pending

Letter Date:

Oct 1, 2015

Received Date:

Oct 7, 2015

Contact Type:

LTR (Letter)

Priority Code:

Normal

Addressee:

 (+)

Addressee Org:

File Code:

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Signature:

 (+)

CC:

Signature Date:

Oct 1, 2015

Primary Subject:

Complaint against Georgia Department of Agriculture for failure to provide migrant farmworkers access to the protections to which they are entitled under the Worker Protection Standard

Secondary Subject:

 (+)

Instructions:

 (+)

Instruction Notes:

General Notes:

*: Required field

(+): Lookup field, press space bar for complete list

LISA J. KRISHER
DIRECTOR OF LITIGATION

DAWSON MORTON
SENIOR STAFF ATTORNEY

LAURA RIVERA
THEODORE ROETHKE
STAFF ATTORNEYS

ISAAC RAISNER
LAW ASSISTANT

HILARY SMITH
PARALEGAL

**FARMWORKER RIGHTS DIVISION OF
GEORGIA LEGAL SERVICES PROGRAM®
SERVICIOS LEGALES PARA LOS TRABAJADORES AGRÍCOLAS**

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October 1, 2015

Velveta Golightly-Howell
Director, Office of Civil Rights
U.S. Environmental Protection Agency
Mail Code 1201A
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Via US Mail
Via E-mail to: Title_VI_Complaints@epa.gov

Dear Director Golightly-Howell,

This letter constitutes a Title VI civil rights complaint pursuant to 40 C.F.R. § 7.120 against the Georgia Department of Agriculture for its failure to provide migrant farmworkers access to the protections to which they are entitled under the Worker Protection Standard ("WPS"), 40 C.F.R. § 170 *et seq.*, on the basis of their race and national origin in violation of 40 C.F.R. § 7.35.

I. Factual Background.

Georgia Legal Services is a non-profit law firm that provides free civil legal services in rural Georgia. The Farmworker Rights Division provides legal services specifically to migrant and seasonable agricultural workers. We represent (b) (6) Privacy, (b) (7)(C) Enforcement Privacy a migrant agricultural worker in the United States on an H-2A temporary agricultural visa to work at (b) (6) Privacy, (b) (7)(C) Enforcement Privacy a large South Georgia farm located in Cobbtown, GA. Both Vidalia Plantation, Inc. and Plantation Sweets, Inc. are owned and operated by (b) (6) Privacy, (b) (7)(C) Enforcement Privacy This complaint refers to all three, collectively, as "the agricultural employer."

On August 5, 2015, I filed a WPS complaint on behalf of (b) (6) Privacy, (b) (7)(C) Enforcement Privacy with the Georgia Department of Agriculture. Ex. 1 (Aug. 5, 2015 WPS complaint). The complaint concerned a July 8, 2015 exposure to pesticide event, during which (b) (6) Privacy, (b) (7)(C) Enforcement Privacy and other workers were exposed to pesticides when the agricultural employer caused tobacco fields to be sprayed with an



anti-suckering agent while the workers labored in the field deflowering tobacco. Indeed, using his phone (b) (6) Privacy, (b) (7)(C) Enforced recorded a video of the active sprayer bearing down on workers as they scrambled out of its path. The workers were then ordered to immediately re-enter the field. (b) (6) Privacy, (b) (7)(C) Enforced and other workers experienced severe nausea from the pesticide exposure.

I contacted both the U.S. DOL OSHA and the Georgia Department of Agriculture, which receives federal funds from the EPA to implement the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136w, and its attendant regulations, including the WPS regulations. To my knowledge both OSHA and the Georgia Department of Agriculture conducted preliminary inquiries, and then the matter was referred to the Georgia Department of Agriculture for primary investigation.¹

Nancy Hall, Program Operation Specialist for Pesticide Complaints and Enforcement with the Georgia Department of Agriculture informed me by telephone that the Georgia Department of Agriculture had no Spanish-speaking investigators capable of interviewing (b) (6) Privacy, (b) (7)(C) Enforced and I asked her to contact me if that changed. Ex. 2 (July 16, 2015 email from D. Morton to N. Hall). The following week, she informed me that the Georgia Department of Agriculture would find a means of translation, and requested (b) (6) Privacy, (b) (7)(C) Enforced name and contact information. Ex. 3 (July 20, 2015 email from N. Hall to D. Morton).

(b) (6) Privacy, (b) (7)(C) Enforced was concerned about retaliation and, accordingly, I inquired whether the Georgia Department of Agriculture's complaint and investigation process had any confidentiality protections. I was informed by Thomas Gray, Director of the Plant Industry Division of the Georgia Department of Agriculture, that there would not be any confidentiality protections. Nonetheless, (b) (6) Privacy, (b) (7)(C) Enforced made the decision to come forward as a complainant, and, on August 5, 2015, I filed a WPS complaint on his behalf. I submitted the complaint to both Mr. Gray and Ms. Hall. The complaint stated that (b) (6) Privacy, (b) (7)(C) Enforced could be made available for an interview with Spanish-language translation.

On September 29, 2015, Ms. Hall informed me that the Georgia Department of Agriculture would not conduct an interview of (b) (6) Privacy, (b) (7)(C) Enforced. She stated that they did "not have the resources to conduct an interview with the complainant" because "[t]ranslator services would require a fee which is not included in [the Department's] budget." Ex. 4 (Sept. 29 email from N. Hall to D. Morton). Ms. Hall also stated that the case was "completed" and would be "referred to EPA Region 4 for their enforcement consideration." Despite the voluminous evidence of violations of both the WPS and Georgia state law, there was no indication that the Georgia Department of Agriculture would take any enforcement action.²

¹ OSHA informed me that they do not have regulatory authority to enforce the WPS standards, but that they did find other violations of OSHA regulations in the course of their inquiry.

² This is consistent with a disturbing trend documented by our office, wherein Georgia state government agencies accept federal funds that obligate the agencies to enforce protections for agricultural workers, but then the agencies decline to undertake enforcement action. Our office has documented such conduct not only by the Georgia Department of Agriculture, but also by the Georgia Department of Labor, which accepts Wagner-Peyser Act funds, but has declined to enforce its attendant regulations, e.g., 20 C.F.R. § 658.400 (Job Service Complaint System).

II. The Department's Refusal to Provide Translation Services for Complainant Interviews Disadvantages Farmworker Complainants of Account of their Race and National Origin in Violation of Title VI of the Civil Rights Act of 1964.

Title VI of the Civil Rights Act of 1964 provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. The United States Supreme Court has held that Title VI prohibits discrimination on the basis of limited English proficiency (“LEP”). *See Lau v. Nichols*, 414 U.S. 563, 568 (1974).

The United States Department of Justice (“DOJ”) has issued formal guidance to federal financial assistance recipients regarding Title VI’s prohibition against national origin discrimination affecting LEP persons. *See* 67 Fed. Reg. 41,455 (June 18, 2002). The DOJ “coordinates government-wide compliance with Title VI and its interpretation of Title VI is entitled to special deference.” *United States v. Maricopa County*, 915 F. Supp. 2d 1073, 1080 (D. Ariz. 2012). This guidance provides that, to determine the extent of its obligation to provide LEP services, a federal financial assistance recipient must consider four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people’s lives; and (4) the resources available to the grantee/recipient and costs.” 67 Fed. Reg. 41,455, 41,459.

These factors overwhelmingly dictate that the Georgia Department of Agriculture must provide Spanish-language translation services to WPS complainants. Migrant farmworkers are disproportionately foreign-born and Hispanic. *See* U.S. Department of Labor, FINDINGS FROM THE NATIONAL AGRICULTURAL WORKERS SURVEY 2001-2002, A DEMOGRAPHIC AND EMPLOYMENT PROFILE OF UNITED STATES FARM WORKERS 3-4 (2005) at 3-4 (78% of crop workers interviewed in the 2001-2002 survey were foreign-born, and 83% identified themselves as Hispanic). This is true even in a state such as Georgia, which has a slightly higher percentage of non-foreign-born and non-Hispanic agricultural workers. Accordingly, hand-labor agricultural workers, for whom the WPS pesticide regulations were promulgated, will overwhelmingly require services and documents in Spanish in order to be provided access to WPS protections or be interviewed for a WPS complaint. Moreover, given serious effects of pesticide exposure, WPS complaints regarding pesticide exposure are of great importance to people’s lives. Finally, while the Georgia Department of Agriculture’s position is that translation would require a fee which is not included in the Department’s budget, the reality is that the Department is a large, well-funded state agency with an annual budget of over \$40 million, approximately \$7 million of which is provided by the federal government. *See* Nathan Deal, THE GOVERNOR’S BUDGET REPORT, FISCAL YEAR 2015 (2015) at 99. The Department cannot avoid its Title VI obligations simply by failing to budget for compliance therewith.

October 1, 2015
Title VI Complaint

Accordingly, I urge your office to conduct an investigation into the Georgia Department of Agriculture's compliance with its anti-discrimination obligations under 40 C.F.R. §§ 7.10-7.135 in regard to its enforcement of the WPS regulations, and to take the steps necessary to ensure that all persons in Georgia, regardless of their national origin, race, or migrant farmworker status, have access to the pesticide-related protections to which they are entitled under federal law.

Pursuant to 40 C.F.R. § 7.120(c), please notify me of your agency's receipt of this complaint within five calendar days. I can be reached by telephone at (404) 463-1633 or by e-mail at dmorton@glsp.org. In addition, I am available to elaborate on any of the matters discussed in this letter.

Sincerely,

s/ Dawson Morton

Dawson Morton
Senior Staff Attorney
Farmworker Division
Georgia Legal Services Program

LISA J. KRISHER
DIRECTOR OF LITIGATION

DAWSON MORTON
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DIRECTOR OF FINANCE

August 5, 2015

Thomas Gray
Director, Plant Industry Division
Georgia Department of Agriculture
19 Martin Luther King, Jr. Drive, S.W.
Atlanta, GA 30334
Via Facsimile: (404) 657-8378
Via Electronic Mail: thomas.gray@agr.georgia.gov

Re: Worker Protection Standards Complaint of (b) (6) Privacy, (b) (7)(C) Enforcement Privacy

Dear Mr. Gray,

I write to submit an official Worker Protection Standards complaint on behalf of (b) (6) Privacy, (b) (7)(C) Enforcement Privacy who has retained the Farmworker Rights Division of the Georgia Legal Services Program. This complaint concerns a July 8, 2015 exposure-to-pesticide incident in a tobacco field under cultivation by (b) (6) Privacy, (b) (7)(C) Enforcement Privacy (collectively, "the agricultural employer"). The facts of this complaint are as follows:

1. (b) (6) Privacy, (b) (7)(C) Enforcement Privacy was recruited in Mexico and hired by the agricultural employer to perform agricultural work on an H-2A temporary agricultural worker visa that was issued on April 7, 2015. (b) (6) Privacy, (b) (7)(C) Enforcement Privacy is currently in lawful, authorized immigration status.
2. On July 8, 2015, (b) (6) Privacy, (b) (7)(C) Enforcement Privacy and other hand-labor agricultural workers were instructed to enter a tobacco field in Cobbtown, GA under cultivation by the agricultural employer in order to deflower tobacco plants by hand. After the incident, (b) (6) Privacy, (b) (7)(C) Enforcement Privacy took a photograph of the entrance to the field, just outside the Cobbtown welcome sign. Exhibit A. The field has GPS coordinates 32°16'38.6"N 82°08'49.0"W, and its location is marked on page 2 the attached Exhibit A. Tattnall County property records included on page 3 of Exhibit A indicate that this field is owned by the agricultural employer.

3. As (b) (6) Privacy, (b) (7)(C) Entp and other workers labored in the field, the agricultural employer caused the field to be sprayed. All the workers were exposed and numerous workers experienced nausea. (b) (6) Privacy, (b) (7)(C) Entp reports smelling a strong chemical after the application, which caused him to feel nausea. After the spraying, the workers were ordered to immediately re-enter the field. (b) (6) Privacy, (b) (7)(C) Entp can be made available for an interview. He will require Spanish-language translation.
4. Using his phone, (b) (6) Privacy, (b) (7)(C) Entp took photographs and recorded video of the sprayer in the field as workers labored in the same field or scrambled out of the field as the sprayer bore down on them. A selection of the photographs is attached as Exhibit B. The video can be made available upon request, and shows workers exiting tobacco rows only moments before an active sprayer exits the same rows. The video shows the active sprayer moving down the entire length of the field, exiting the field, turning 180°, and re-entering the field to continue spraying.
5. On a subsequent day, (b) (6) Privacy, (b) (7)(C) Entp took a photograph of a chemical container present in the field. (b) (6) Privacy, (b) (7)(C) Entp had seen the same container in the field on the day of the exposure incident. The photograph is attached as Exhibit C, and indicates that the chemical was Drexel Sucker-Plucker, an anti-suckering agent. The complete EPA-approved pesticide label is attached as part of Exhibit C, and shows that the chemical has a Restrict Entry Interval ("REI") of 24 hours. On the advice of our office, (b) (6) Privacy, (b) (7)(C) Entp saved the clothing that another worker present in the field (and visible at second 20 of the video) was wearing during the incident. The clothing can be made available to your agency for testing.
6. As a result of initial inquiries by our office, you conducted a preliminary investigation of the incident. Your agency was apparently told that agricultural employer "was using this field to calibrate a sprayer and had only water in the tank." Exhibit D (email of Thomas Gray to Dawson Morton, dated July 23, 2015). The agricultural employer's explanation has no credibility. The video taken by Mr. Lopez clearly shows the sprayer under motion for an extended period of time, moving through the entire field as it sprays. And the video clearly shows that no liquid was captured for measurement. All available literature indicates that calibration testing is to be done in short intervals with the sprayer standing still so that the water can be collected for measurement. *See, e.g.,* Paul E. Sumner and Michael J. Bader, "Calibration Method for Sprayers and Other Liquid Applicators," UNIVERSITY OF GEORGIA COOPERATIVE EXTENSION CIRCULAR 683 (February 2012), available at http://extension.uga.edu/publications/files/pdf/C%20683_3.PDF; *see also* P.D. Ayers and B. Bosley, "Sprayer Calibration Fundamentals," COLORADO STATE UNIVERSITY EXTENSION FACT SHEET 5.003 (September 1992), available at <http://www.ext.colostate.edu/pubs/farmmgt/05003.pdf> (articles attached as Exhibit E).
7. The agricultural employer's conduct in causing the field to be sprayed while hand-labor workers were in the field, and then ordering the workers to immediately re-enter the freshly sprayed field, violated the Worker Protection Standards promulgated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136w, and its attendant regulations. *See* 40 C.F.R. § 170.110(a) (prohibiting the agricultural employer

- from allowing or directing any person, except the applicator, to remain or enter a treated area “during the application of any pesticide on a farm”); 40 C.F.R. § 170.112(a) (prohibiting the agricultural employer from allowing or directing any hand-labor agricultural worker to enter or remain in a treated area “[a]fter the application of any pesticide . . . before the [REI] specified on the pesticide labeling has expired”).
8. The agricultural employer has also violated section 12(a)(2)(G) of the FIFRA by using a “registered pesticide in a manner inconsistent with its labeling.” 40 C.F.R. § 170.9(a). As a result, the agricultural employer is subject to civil penalties and criminal sanctions under section 14 of the FIFRA. 40 C.F.R. § 170.9(b).
 9. The Georgia Department of Agriculture has authority to enforce these provisions of the FIFRA pursuant to the Georgia Pesticide Use and Application Act of 1976, O.C.G.A. § 2-7-96(2). This complaint is filed within 60 days of the incident, and is therefore timely under O.C.G.A. § 2-7-110(b). This complaint is not submitted on a form devised by the Georgia Department of Agriculture because no such form is publically available on the department’s website, <http://agr.georgia.gov/pesticides.aspx>.
 10. In addition, the agricultural employer has violated the Georgia Pesticide Control Act of 1976, O.C.G.A. § 2-7-62(b)(3) (“It shall be unlawful . . . [f]or any person to use or cause to be used any pesticide in a manner inconsistent with its labeling or the regulations of the Commissioner”), and its attendant regulations, Rules and Regulations 40-11-10-.01(2)(c) (“It shall be unlawful for any person to . . . [h]andle . . . or distribute any pesticide in a manner that would endanger man . . .”). As a result, the agricultural employer may be guilty of a misdemeanor under state law. O.C.G.A. § 2-7-73.

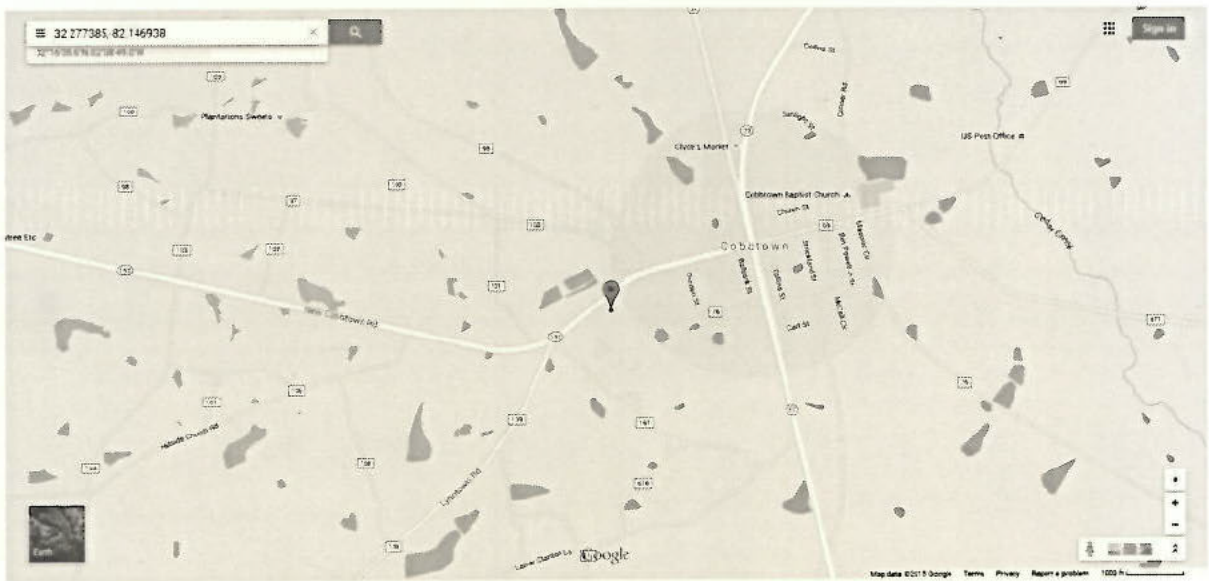
Accordingly, on behalf of [REDACTED] I formally request that you open a formal investigation into this incident, enforce the federal Worker Protection Standards and Georgia state law, and assess penalties on the agricultural employer. Please do not hesitate to contact me at (404) 463-1633 or dmorton@glsp.org if you have further questions about this complaint.

Sincerely,

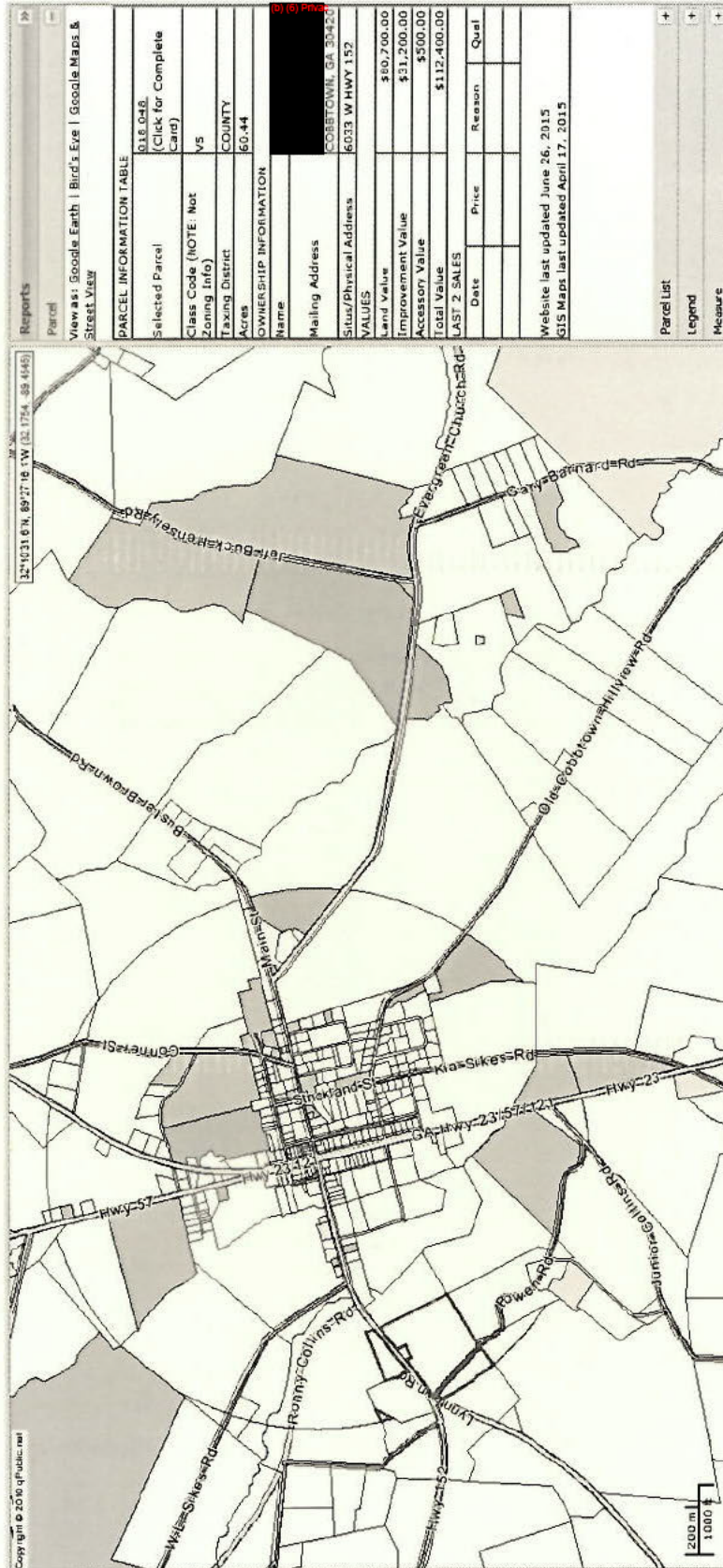
Dawson Morton
Senior Staff Attorney
Farmworker Rights Division
Georgia Legal Services Program

Copy to: Nancy Hall
Program Operation Specialist
Pesticide Complaints and Enforcement
Via Electronic Mail: nancy.hall@agr.georgia.gov

EXHIBIT A



Map of field location created using GPS coordinates taken by (b) (6) Privacy, (b) (7)(C) Enforcement Privacy



Tattall County property records for field indicating ownership by (b) (6) Privacy, (b) (7)(C) Embodiment of

EXHIBIT B

EXHIBIT C

19713-35

8/1/2014

1/7



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

Ms Luz G Chan
Drexel Chemical Company
PO BOX 13327
Memphis, TN 38113-0327

AUG 01 2014

Subject: Product Name: Sucker-Plucker Concentrate
EPA Reg. No. 19713-35
Submission date: 1/13/14
Resubmission dates: 7/28/14 & 7/29/14
Amendment: Add "broadcast boom" application, clarify use directions, formatting
and other changes for harmonization across Drexel tobacco labels
Decision Number 487452

Dear Registrant:

The amendment referred to above, submitted in connection with registration under the Federal Insecticide, Fungicide and Rodenticide Act as amended is acceptable under FIFRA 3 (c) (5).

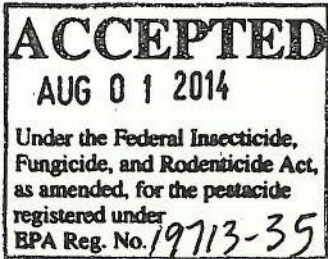
A stamped copy of your labeling is enclosed for your records. This labeling supersedes all previously accepted labeling. You must submit one (1) copy of the final printed labeling before you release the product for shipment with the new labeling. In accordance with 40 CFR 152.130(c), you may distribute or sell this product under the previously approved labeling for 18 months from the date of this letter. After 18 months, you may only distribute or sell this product if it bears this new revised labeling or subsequently approved labeling. "To distribute or sell" is defined under FIFRA section 2(gg) and its implementing regulation at 40 CFR 152.3.

If you have questions concerning this letter, please call Banza Djapao at 703-305-7269, or via email at djapao.banza@epa.gov or you may call me at 703-308-9443.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Kish".

Tony Kish
Product Manager 22
Fungicide Branch
Registration Division (7504P)



Erin Long 2/7



Sucker-Plucker®

Concentrate

Tobacco Sucker Control Agent

ACTIVE INGREDIENTS:

Fatty Alcohols.....	85.0%
Octanol (C ₈) - 36.35%	
Decanol (C ₁₀) - 48.39%	
Related Compounds (Dodecanol - C ₁₂) - 0.26%	

OTHER INGREDIENTS: 15.0%

TOTAL: 100.0%

This product contains 6.04 pounds of active ingredients per gallon.

KEEP OUT OF REACH OF CHILDREN

DANGER / PELIGRO

Si usted no entiende la etiqueta, busque a alguien para que se la explique a usted en detalle. (If you do not understand the label, find someone to explain it to you in detail.)

See FIRST AID Below

EPA Reg. No. 19713-35

EPA Est. No. 19713-XX-XXX

Net Content: _____

FIRST AID
IF IN EYES: <ul style="list-style-type: none">• Hold eye open and rinse slowly and gently with water for 15 to 20 minutes.• Remove contact lenses, if present, after the first 5 minutes, then continue rinsing eye.• Call a poison control center or doctor for treatment advice.
IF ON SKIN OR CLOTHING: <ul style="list-style-type: none">• Take off contaminated clothing.• Rinse skin immediately with plenty of water for 15 to 20 minutes.• Call a poison control center or doctor for treatment advice.
IF SWALLOWED: <ul style="list-style-type: none">• Call a poison control center or doctor immediately for treatment advice.• Have person sip a glass of water if able to swallow.• Do not induce vomiting unless told to do so by a poison control center or doctor.• Do not give anything to an unconscious or convulsing person.
IF INHALED: <ul style="list-style-type: none">• Move person to fresh air.• If person is not breathing, call 911 or an ambulance, then give artificial respiration, preferably mouth-to-mouth, if possible.• Call a poison control center or doctor for further treatment advice.
Have the product container or label with you when calling a poison control center or doctor, or going for treatment. You may also contact CHECTREC at 800-424-9300 for emergency.
Note to Physician: Probable mucosal damage may contraindicate the use of gastric lavage.

35SP-0714*P

PRECAUTIONARY STATEMENTS

Hazards to Humans and Domestic Animals

DANGER: Corrosive. Causes irreversible eye injury. Causes skin irritation. Do not get in eyes, on skin or on clothing. Harmful if swallowed, inhaled or absorbed through the skin. Avoid breathing spray mist.

PERSONAL PROTECTIVE EQUIPMENT (PPE)

Some materials that are chemical-resistant to this product are listed below. If you want more options, refer to Category C on EPA chemical-resistance category selection chart.

Mixers, loaders, applicators, and other handlers must wear: Protective eyewear (goggles or eyeshield), coveralls over a short-sleeved shirt and short pants, chemical-resistant gloves made of any waterproof material (butyl rubber, nitrile rubber, neoprene rubber, polyvinyl chloride, or viton), socks, chemical-resistant footwear, a chemical-resistant apron when mixing/loading or cleaning equipment, and chemical-resistant headgear for overhead exposure.

Follow manufacturer's instructions for cleaning/maintaining PPE. If no such instructions for washables exist, use detergent and hot water. Keep and wash PPE separately from other laundry.

Discard clothing and other absorbent materials that have been drenched or heavily contaminated with this product's concentrate. Do not reuse them.

USER SAFETY RECOMMENDATIONS

Users should: 1) Wash hands before eating, drinking, chewing gum, using Tobacco or using the toilet. 2) Remove clothing/PPE immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing. 3) Remove PPE immediately after handling this product. Wash the outside of gloves before removing. As soon as possible, wash thoroughly and change into clean clothing.

ENVIRONMENTAL HAZARDS

Do not apply directly to water or to areas where surface water is present or to intertidal areas below the mean high water mark. Do not contaminate water when disposing of equipment washwaters or rinsate.

PRODUCT INFORMATION

SUCKER-PLUCKER Concentrate is a carefully balanced combination of active ingredients and wetting agents (surfactants) to be used for the control of sucker growth on all types of Tobacco. The concentrated product is diluted with water to form a creamy emulsion which is applied as a coarse spray. The emulsion is effective only when it comes in direct contact with the suckers. Wet the sides of the Tobacco stalk with the spray and contact all small, immature suckers. This product is a contact material, thus, if plants are leaning it is necessary to straighten those plants so the emulsion flows down the stalk evenly and contacts each sucker axil or sucker bud. This material can be used alone, or may be followed by a systemic sucker control agent in a dual treatment program.

DIRECTIONS FOR USE

It is a violation of Federal law to use this product in a manner inconsistent with its labeling. Do not apply this product through any type of irrigation system. Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application. For any requirements specific to your State or Tribe, consult the agency responsible for pesticide regulation.

AGRICULTURAL USE REQUIREMENTS

Use this product only in accordance with its labeling and with the Worker Protection Standard (WPS), 40 CFR Part 170. This standard contains requirements for the protection of agricultural workers on farms, forests, nurseries, greenhouses and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label about personal protective equipment (PPE) and restricted entry interval (REI). The requirements in this box only apply to uses of this product that are covered by the WPS.

Do not enter or allow worker entry into treated areas during the REI of 24 hours.

PPE required for early entry to treated areas that is permitted under the WPS and that involves contact with anything that has been treated, such as plants, soil or water is: Protective eyewear (goggles or face-shield), coveralls over short-sleeved shirt and short pants, chemical-resistant gloves made of waterproof material (such as butyl rubber, nitrile rubber, neoprene rubber, polyvinyl chloride, or viton), socks, chemical-resistant footwear, and chemical-resistant headgear for overhead exposure.

TIME OF APPLICATION

This product may be applied either before or after topping at the button to early flower stage. Best results are usually obtained by making the first application before topping, and as soon as 50 to 60 percent of the plants have a visible button. Floral parts help to intercept sprays increasing sucker control in the upper leaf axils. Remove Tobacco plant terminals that are in the elongated button stage as soon as possible after the first application. This product is most effective when applied at 3 to 5 day intervals and when humidity is low and leaf axils are fully exposed. Optimum time for application is generally between 10:00 A.M. and 6:00 P.M. on sunny days. The best results are obtained when plants are sprayed in the morning after the dew dries or in the afternoon when the plants have recovered from wilt. Some injury may occur to tender leaves at the top of the plants from an application of this product under bright sunlight at temperatures above 90°F. Injury may result if this product is applied to the underside of Tobacco leaves during high winds sufficient enough to turn leaves and such applications are not recommended. Do not apply during rain or to wet plants. If this material has been applied to Tobacco plants for over one hour prior to rain or irrigation, reapplication should not be necessary.

MIXING INSTRUCTIONS

The diluted emulsion is most easily prepared by adding the required amount of this product into the spray tank one-half filled with water using mild agitation. Then add sufficient water to the spray tank to total the required minimum solution.

Note: In order to minimize the possibility of injury to Tobacco plants, do not mix this product with other Tobacco chemicals such as insecticides, fungicides and herbicides, or apply this product to plants that have recently been treated with such chemicals.

RATE OF APPLICATION

Flue-cured and Burley Tobacco: For the first application, dilute this product at the rate of 1.75 to 2 gallons in sufficient water to total a minimum of 50 gallons spray solution. For the second application in Flue-cured Tobacco, the rate of this product may be increased by diluting 2.5 gallons in sufficient water to total a minimum of 50 gallons spray solution 3 to 5 days after the first application. For extended sucker control, this product may be applied as needed, but not to exceed 7 times per crop, at the rate of 2.5 gallons in sufficient water totaling a minimum of 50 gallons of spray solution. Applications may also be made under optimum growing conditions and heavy sucker pressure applied weekly 3 to 4 weeks after maleic hydrazide has been applied.

Dark Tobacco: Dilute this product at the rate of 2 to 2.5 gallons in sufficient water totaling a minimum of 50 gallons of spray solution. Apply the specified lower rate when optimum growing conditions exist and leaves are tender. Otherwise, apply the specified higher rate. When applied by hand, 1 gallon of diluted product will treat approximately 250 plants. If a power sprayer is used, apply a minimum of 50 gallons spray solution per acre.

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METHODS OF APPLICATION

Hand Application

This product may also be applied with hand-held equipment or with backpack sprayer. Apply as a coarse spray directed downward at the top of the stalk from 6 to 8 inches above the top leaves. Low tank pressure is required, and in no case should more than about 20 to 25 pounds per square inch (psi) be used.

Powered Spray Equipment

Broadcast Application: When applying as a broadcast spray or straight boom application, use one nozzle directed over the center of the row and one nozzle directed over the center of the row- middle (TG-3, TG-5 full cone tips or equivalent). Maintain a coarse spray using 25 to 35 psi boom pressure. By using TG-3 spray tips, spraying at 25 to 35 psi pressure and operating at a speed of 1.5 to 3 mph, apply in a minimum of 50 gallons of diluted emulsion per acre of Tobacco. By using TG-5 spray tips, spraying at 25 to 35 psi pressure and operating at a speed of 3 to 5 mph, apply a minimum of 50 gallons of diluted emulsion per acre of Tobacco. Apply the diluted product to Tobacco as a coarse spray from a height of 12 to 16 inches above the top of the stalk.

Directed Application (3 Nozzles): When applying as a directed spray, use three nozzles per row (TG-3, TG-5 full cone tips or equivalent). Direct one TG-5 nozzle downward over the center of the row and TG-3 nozzles (9 inches on each side) directed at or slightly above the top of the stalk. Keep boom pressure at 20 to 25 psi and should never exceed 30 psi. By using TG-3, TG-5 spray tips, spraying at 20 to 25 psi pressure and operating at a speed of 2.5 to 3 mph, apply a minimum of 50 gallons of diluted emulsion per acre of Tobacco. Apply the diluted product to Tobacco as a coarse spray from a height of 12 to 16 inches above the top of the stalk.

Use Precautions: If allowed to stand for extended periods of time, the diluted emulsion may separate. Always remember to mix well immediately before using and maintain agitation during application. All sprayers should be equipped with a pressure regulator and a pressure gauge.

APPLICATION NOTES

1. Application of this product at concentrations higher than specified may cause leaf damage.
2. Be sure spray equipment is clean prior to use.
3. After adding this product to the spray tank, start-up and maintain good agitation of the diluted solution.
4. Do not apply this product to wet plants, such as immediately after heavy rain or irrigation or when there is a heavy dew present.
5. Do not apply on windy days since the spray solution may not be deposited uniformly on the leaf axils and sucker buds.
6. Do not spray during excessive temperatures in excess of 95°C or the middle of the day during heat stress since leaf burn may occur. Injury may also result if the product is sprayed on the underside of the Tobacco leaf, such as when the wind is strong enough to turn top leaves.
7. In Burley Tobacco, during prolonged periods of high heat and humidity or under other conditions favoring the spread of hollow stalk or stem rot diseases, delay application of this product until these conditions pass.
8. Closely hand-suckered or Tobacco treated with this product will not ripen as rapidly as poorly suckered Tobacco. Also, under some conditions, tips treated with this product have a tendency to turn yellow prematurely. This is not harmful and does not mean that your Tobacco is ripe. Therefore, do not harvest Tobacco treated with this product by using time and color of the leaves as your only guide to ripeness. Use other characteristics indicative of ripeness such as (a) fading of color from midrib, and (b) change in apparent leaf texture.
9. Do not harvest within 7 days of application.

NUMBER OF APPLICATIONS

In many cases a single application of this product is satisfactory to control both primary and secondary suckers. If secondary sucker growth appears vigorous, prompt follow-up treatments within 5 to 7 days after the initial treatment may be advantageous. Excellent leaf quality can be obtained with the use of this product when applying

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sequential applications. Some growers favor a dual treatment using this product first (at the button stage) followed 1 to 2 weeks later with a systemic sucker control agent (maleic hydrazide such as Super Sucker-Stuff, Sucker-Stuff and Sucker-Stuff 80EG) used in accordance with manufacturer's instructions. DO NOT apply this product more than seven times per crop.

ADDITIONAL TREATMENT PROGRAMS

Flue-Cured Tobacco: If sucker growth is vigorous or if development of Tobacco in the field is irregular, second and third applications of this product, at 3 to 5 day intervals may be needed. For these additional applications, use 2 to 2.5 gallons of this product in sufficient water per acre to total a minimum of 50 gallons spray solution. Within 7 to 10 days after the last application of this product, apply Super Sucker-Stuff, Sucker-Stuff, or Sucker-Stuff 80EG at the labeled rate and timing.

Air-Cured (Burley, Cigar or Maryland): Application of this product may be followed in 7 to 10 days by Super Sucker-Stuff, Sucker-Stuff, or Sucker-Stuff 80EG at the labeled rate and timing. If a systemic material is not used, a second application of this product may be made 5 to 7 days after the first application.

TANK MIX APPLICATIONS

Flue-Cured Tobacco: A tank mixture of this product plus Super Sucker-Stuff, Sucker-Stuff, or Sucker-Stuff 80EG may be applied to Flue-cured Tobacco at the early flower growth stage. This tank mixture application will usually follow application of a contact sucker control agent. Before treatment, top the Tobacco and remove all suckers over one inch in length. Direct the spray mixture to the upper one-third of the plant and operate the sprayer at low pressure similar to that of a contact application. This will ensure that the droplets are large enough for the mixture to run down the stalk. Use normal spray precautions, such as those used while applying contact material agents.

Notes:

1. Use only one application of the tank mix per growing season.
2. Do not harvest within 3 weeks of last application if this product is tank mixed with Maleic Hydrazide.
3. All applicable directions, restrictions and precautions are to be followed.

STORAGE AND DISPOSAL

Do not contaminate water, food or feed by storage or disposal.

STORAGE: Storage should be under lock and key in a ventilated room and secure from access by unauthorized persons and children. Storage should be in a cool, dry area away from any heat or ignition source. Do not stack containers over 2 pallets high. Move containers by handles or cases. Do not move containers from one area to another unless they are securely sealed. Keep containers tightly sealed when not in use. Keep away from any puncture source. Avoid storage near water supplies, food, feed and fertilizer to avoid contamination. Avoid contamination with oxidizing materials. Store in original containers only. If the contents are leaking or material is spilled, follow these steps:

1. Contain spill. Absorb with a material such as sawdust, clay granules or dirt.
2. Collect and place in suitable containers for disposal.
3. Wash area with soap and water to remove remaining pesticide.
4. Follow washing with clean water rinse.
5. Place a leaking container in plastic tub and transfer contents, as soon as possible, to an empty original container.
6. Do not allow runoff to enter sewer or contaminate water supplies.
7. Dispose of waste as indicated below:

PESTICIDE DISPOSAL: Wastes resulting from the use of this product may be disposed on site or at an approved waste disposal facility.

(continued)

(continuation)

CONTAINER HANDLING:

Nonrefillable Container (rigid material; less than 5 gallons): Nonrefillable container. Do not reuse or refill this container. Offer for recycling, if available. Clean container promptly after emptying. Triple rinse as follows: Empty the remaining contents into application equipment or a mix tank and drain for 10 seconds after the flow begins to drip. Fill the container one-fourth full with water and recap. Shake for 10 seconds. Pour rinsate into application equipment or a mix tank or store rinsate for later use or disposal. Drain for 10 seconds after the flow begins to drip. Repeat this procedure two more times. Dispose of empty container in a sanitary landfill or by incineration, or, if allowed by State and local authorities, by burning. If burned, stay out of smoke.

Nonrefillable Container (rigid material; 5 gallons up to < 250 gallons): Nonrefillable container. Do not reuse or refill this container. Offer for recycling, if available. Clean container promptly after emptying. Triple rinse as follows: Empty the remaining contents into application equipment or a mix tank. Fill the container one-fourth full with water. Replace and tighten closures. Tip container on its side and roll it back and forth, ensuring at least one complete revolution, for 30 seconds. Stand the container on its end and tip it back and forth several times. Turn the container over onto its other end and tip it back and forth several times. Empty the rinsate into application equipment or a mix tank or store rinsate for later use or disposal. Repeat this procedure two more times. Dispose of empty container in a sanitary landfill or by incineration, or if allowed by State and local authorities, by burning. If burned, stay out of smoke.

Refillable Container (\geq 250 gals. & Bulk): Refillable container. Refill this container with pesticide only. Do not reuse this container for any other purpose. Cleaning the container before final disposal is the responsibility of the person disposing of the container. Cleaning before refilling is the responsibility of the refiller. To clean the container before final disposal, empty the remaining contents from this container into application equipment or mix tank. Fill the container about 10% full with water. Agitate vigorously or recirculate water with the pump for 2 minutes. Pour or pump rinsate into application equipment or rinsate collection system. Repeat this rinsing procedure two more times.

WARRANTY—CONDITIONS OF SALE

OUR DIRECTIONS FOR USE of this product are based upon tests believed reliable. Follow directions carefully. Timing and method of application, weather and crop conditions, mixtures with other chemicals not specifically recommended and other influencing factors in the use of this product are beyond the control of the Seller. To the extent consistent with applicable law, Buyer assumes all risks of use, storage and handling of this material not in strict accordance with directions given herewith. To the extent consistent with applicable law, in no case shall the Manufacturer or the Seller be liable for consequential, special or indirect damages resulting from the use or handling of this product when such use and/or handling is not in strict accordance with directions given herewith. The foregoing is a condition of sale by the Seller and is accepted as such by the Buyer.

Manufactured By:

**Drexel Chemical Company**

P.O. BOX 13327, MEMPHIS, TN 38113-0327

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EXHIBIT D

From: "Gray, Thomas" <Thomas.Gray@agr.georgia.gov>

Date: July 23, 2015 at 9:49:54 AM EDT

To: Dawson Morton <dawson@gafr.org>, "Hall, Nancy" <Nancy.Hall@agr.georgia.gov>

Cc: "Hall, Nancy" <Nancy.Hall@agr.georgia.gov>

Subject: RE: Plantation Sweets

Good morning Mr. Morton,

Once we have completed our investigation he would not have any confidentiality protections. Our case files are subject to the Georgia Open Records Act. I'm not sure what his concern is. We need someone involved in the incident to come forward and tell us exactly what they experienced and provide documentation they were in fact sprayed by this farmer. As of this stage in the investigation our information indicates the grower was using this field to calibrate a sprayer and had only water in the tank. Without a "complainant" we have no case of alleged pesticide misuse.

Thank you,

Tommy Gray

EXHIBIT E

Calibration Method for Sprayers and Other Liquid Applicators

Paul E. Sumner and Michael J. Bader
Extension Engineers

The procedure below is based on spraying 1/128 of an acre per nozzle or row spacing and collecting the spray that would be released during the time it takes to spray the area. Because there are 128 ounces of liquid in 1 gallon, this convenient relationship results in ounces of liquid collected being directly equal to the application rate in gallons per acre.

Calibrate with clean water when applying toxic pesticides mixed with large volumes of water. Check uniformity of nozzle output across the boom. Collect from each for a known time period. Each nozzle should be within 10 percent of the average output. Replace with new nozzles if necessary. When applying materials that are appreciably different from water in weight or flow characteristics – such as fertilizer solutions, etc. – calibrate with the material to be applied. Exercise extreme care and use protective equipment when active ingredient is involved.

Step 1. Determine type of application to be made and select appropriate procedure from Table 1. *Example:* Herbicide Broadcast, Procedure A.

Table 1. Corresponding procedures for different spray applications		
Type of Application	Procedure	Coverage Basis
<i>Herbicide, Insecticide, Nematicide, Fungicide or Liquid Fertilizer</i>		
Broadcast	A	Broadcast (gal/acre)
Band	B	Broadcast (gal/acre of band)
Row	C	Row (gal/acre of row)
Note: Determine and use average row spacing for modified row patterns. Use width of area covered per row as row spacing in skip row patterns.		

Step 2. Using procedure A, B or C below as selected in Step 1, determine appropriate calibration distance from Table 2.

- (A) **Broadcast Application:** Outlets or nozzles must be evenly spaced. Measure outlet (nozzle, etc.) spacing. Find this spacing in left column of Table 2 and read the corresponding calibration distance. *Example:* For a 19-inch spacing, the distance would be 214.9 feet.
- (B) **Band Application:** Measure band width. Find this band width in the left column of Table 2 and read the corresponding calibration distance. *Example:* For a 12-inch band, the distance would be 340.3.
- (C) **Row Application:** Measure row spacing for evenly spaced rows. Find this row spacing in the left column of Table 2 and read the corresponding calibration distance from the column on the right. *Example:* For a 38-inch row spacing, the distance would be 107.5 feet. (See note above for modified and skip rows.)

- Step 3.** Measure and mark calibration distance in a **typical** portion of the field to be sprayed.
- Step 4.** With all attachments in operation (harrows, planters, etc.) and traveling at the desired operating speed, determine the number of seconds it takes to travel calibration distance. Be sure machinery is traveling at full operating speed the full length of the calibration distance. Mark or make note of engine RPM and gear. **Machine must be operated at same speed for calibration.**
- Step 5.** With sprayer sitting still and operating at same throttle setting or **engine RPM** as used in Step 4, adjust pressure to the desired setting. **Machine must be operated at same pressure used for calibration.**
- Step 6.** For procedure (A), Step 2, broadcast application – Collect spray from **one** nozzle or outlet for the number of seconds required to travel the calibration distance.
- For procedure (B), Step 2, band application – Collect spray from **all** nozzles or outlets used on one band width for the number of seconds required to travel the calibration distance.
- For procedure (B), Step 2, row application – Collect spray from **all** outlets (nozzles, etc.) used for one row for the number of seconds required to travel the calibration distance.
- Step 7.** Measure the amount of liquid collect in fluid ounces. **The number of ounces collected is the gallons per acre rate** on the coverage basis indicated in Table 1. For example, if you collect 18 ounces, the sprayer will apply 18 gallons per acre. Adjust applicator speed, pressure, nozzle size, etc., to obtain recommended rate. If speed is adjusted, start at Step 4 and recalibrate. If pressure or nozzles are changed, start at Step 5 and recalibrate.

CAUTION: *Agricultural Chemicals can be dangerous. Improper selection or use can seriously injure people, animals, plants, soil or other property. Be Safe: Select the right chemical for the job. Handle it with care. Follow instructions on the container label and from the equipment manufacturer.*

Table 2. Calibration distances with corresponding widths.

Row Spacing, Outlet Spacing or Band Width (whichever applies) (inches)	Calibration Distance (feet)	Row Spacing, Outlet Spacing or Band Width (whichever applies) (inches)	Calibration Distance (feet)
48**	85.1	24	170.2
46	88.8	20	204.2
44	92.8	19	214.9
42	97.2	18	226.9
40	102.1	14	291.7
38	107.5	12	340.3
36	113.4	10	408.4
32	127.6	8	510.5
30	136.1		

To determine distance for spacing or band width not listed, divide the spacing or band width expressed in feet into 340.3. *Example:* For a 13" band, the calibration distance would be 340 divided by 13/12 = 314.1.

** To increase calibration accuracy for a wide nozzle spacing, multiply calibration distance by a factor (for example, 2); then divide the fluid amount collected by the same factor for GPA. For narrow nozzle spacings with long calibration distances, divide calibration distance by a factor (for example, 4); then multiply the fluid amount collected by the same factor for GPA.

Step 8. To determine amount of pesticide to put into a sprayer or applicator tank, divide the total number of gallons of mixture to be made (tank capacity for a full tank) by the gallons per acre rate from Step 7 and use recommended amount of pesticide for this number of acres.

Band Application

Use the recommended broadcast pesticide rates to make tank mixtures for band applications when calibrating with procedure (B) of this method. The number of gallons/acre determined in Step 7 are the gallons that will be applied to each acre of actually treated band.

To determine the gallons of spray mixture required to make a band application on a field, the number of acres that will be in the actually treated band must be determined. When all treated bands are the same width and all untreated bands are the same width, which is usually the case, the acres in the actually treated band can be calculated by placing the width of the treated band over the sum of the widths of the treated band and the untreated band, and multiplying this fraction times the number of acres in the field. *Example:* How many acres will actually be treated in a 30-acre field if a 12-inch band of chemical is applied over the drill of rows spaced 36 inches apart. The treated band width is 12 inches. The untreated band width is $(36'' - 12'') = 24$ inches. Acres actually treated will be 12 inches divided by $(12'' + 24'')$ times 30 acres = 10 acres. The amount of mixture required will be 10 times the number of gallons per acre from Step 7. The amount of chemical required will be 10 times the recommended broadcast rate for 1 acre.

Check rate recommendations carefully as to type of application, broadcast, band or row, and type of material specified, formulated product, active ingredient, etc.

Calculating Formulation Requirements for Active Ingredient Rates

To determine amount of liquid pesticide required for a rate given in pounds of active ingredient per acre, divide recommended rate by pounds active ingredient per gallon stated on label. *Example:* Pesticide label states 4 lbs. active ingredient per gal. and recommends $\frac{1}{2}$ lb. active ingredient per acre. Amount of pesticide required - $\frac{1}{2}$ lb/A divided by 4 lb/gal = gal/A.

To determine amount of wettable powder required for a rate given in pounds active ingredient per acre, divide recommended rate by percent active ingredient stated on label. *Example:* Pesticide label states powder is 50 percent active ingredient. Two pounds of active ingredient are recommended per acre. Amount of pesticide powder required - 2 lbs AI/A divided by 0.5 AI/lb = 4 lbs/A.

Learning *for* Life

Circular 683

Reviewed February 2012

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Sprayer Calibration Fundamentals

Fact Sheet No. 5.003

Farm and Ranch Series | Equipment

by P.D. Ayers and B. Bosley*

Due to timeliness and effectiveness, chemical pesticide application has become a leading method of weed and insect control in U.S. agricultural production. The continued use of pesticides in the agricultural industry has led to concerns of chemical trespassing by groundwater contamination or drift.

Inaccurate pesticide application rates, spray patterns and droplet size can lead to pesticide movement from the targeted area and reduce the effectiveness of the pesticide. A recent study in Nebraska revealed that two-thirds of the applicators were applying pesticides improperly (application rate errors greater than 5 percent). A similar study conducted in North Dakota indicated that 60 percent of tested sprayers had calibration errors greater than 10 percent. Although inaccurate tank mixing causes some of these errors, a majority of the problems result from improper spray equipment calibration and worn nozzles.

Nozzle Selection

The first step in sprayer calibration is to determine the correct nozzle type and size (flow rate). Flat-fan nozzles are used for broadcast spraying of most herbicides and some insecticides where a medium droplet size is needed. Flat-fan nozzles are used for banding herbicides. Flooding type and full cone nozzles used for pre-plant herbicides produce drift-resistant large droplets, and wide nozzle spacing can be used. Hollow cone nozzles produce smaller droplets and are used to apply insecticides and contact herbicides that need to penetrate the canopy.

Inaccurate applications can be due to nozzle wear. Therefore it is important to select the correct nozzle material. Wear-

resistant materials such as tungsten, carbide, ceramic and hardened stainless steel help nozzles maintain a constant flow rate after a long period of use. Nozzles made from less durable materials (plastic, brass) demonstrate increased flow rates after only a short period of spraying. For example, after 50 hours of spraying, a brass nozzle can have an increased flow rate of 10 to 15 percent, whereas a hardened stainless steel nozzle will increase only about 2 percent. The increased flow rates result from an increased nozzle orifice area. The added cost to purchase a more durable nozzle can pay for itself many times over by reducing the overapplication that results from nozzle wear.

Nozzle size depends on the desired application rate, ground speed and nozzle spacing. For each nozzle type and spray angle, the manufacturer recommends spray height and nozzle spacing. Nozzle spacings of 20 and 30 inches are most common. The desired flow rate from the nozzle can be determined from the following equation:

$$\text{GPM} = (\text{GPA} \times \text{MPH} \times w) / 5940$$

where:

GPM = the nozzle flow rate in gallons per minute,

GPA = the application rate in gallons per acre,

MPH = the ground speed of the sprayer in miles per hour ($\text{MPH} = (\text{ft}/\text{min}) / 88$),

and w = the nozzle spacing in inches for broadcast spraying.

Calibration Procedure

Spray Rig Preparation

1. Thoroughly clean the spray rig. Check for signs of rust, leaks or other problems.
2. Determine the gallons needed per acre based on the recommended rate from the pesticide label, tank size, pesticide container size, and rate of pesticide application per acre.



Quick Facts

- Inaccurate pesticide application rates, spray patterns and droplet size can lead to the movement of pesticides from the targeted area and reduce pesticide effectiveness.
- The first step in sprayer calibration is to determine the correct nozzle type and size.
- Nozzle material is important in reducing inaccurate applications due to nozzle wear.

*P.D. Ayers, Colorado State University Extension agricultural engineer and professor, chemical and bioresource engineering and B. Bosley, Morgan County Extension. Reviewed by D. Oatman, Extension agriculture agent, Las Animas County. 09/98

3. Calculate a rough estimate of nozzle application rates based on the planned application speed and boom pressure.
4. Check all nozzles on the spray boom for signs of wear and nozzle size. Replace worn nozzles and nozzles of the wrong size for the desired application.
5. Half-fill the spray tank with water and go to the prepared field.

One Way to Calibrate a Sprayer

1. Measure the ground speed of the rig with the sprayer implement in place. (Average the travel time of the tractor in seconds over 300 feet in the field for two separate passes.)
2. Calculate the ground speed.
3. Measure the distance in inches between spray nozzles on the boom.
4. Calculate the desired nozzle output (ounces or gallons).
5. Catch one minute's worth of water from one or two nozzles at the operating pressure.
6. Adjust the pump pressure or ground speed until the desired output is reached.
7. Calculate the acreage covered on one tank of spray mixture.
8. Finish filling the spray tank with pesticide and carrier (usually water). Apply about one-half tankful of spray and determine if the correct amount of acreage has been covered.
9. Continue spray application; recalibrate if the first half tankful didn't cover the correct acreage.

Example

The field is prepared and spray tanks, booms and nozzles have been cleaned and checked. The pesticide label recommends that 1 quart per acre of chemical and a minimum application of 10 gallons of mixture per acre be applied. The pesticide comes in 2 ½ gallon containers; the spray tank holds 350 gallons. Three hundred gallons can be applied before refilling.

In this situation, applying pesticide to 30 acres with one tankful would comply with the label. Solid-applied herbicides generally work better with larger volumes of spray mixture. One full container of chemical will cover 10 acres. If 15 gallons of carrier per acre are applied, the applicator would get 20 acres per refill and use two containers of pesticides.

The tractor with spray rig is set as if spraying the first 300-foot pass in 42.5 seconds. The second pass is a bit faster, at 42.7 seconds. The average time is 42.6 seconds.

$$\text{MPH} = 300 \text{ ft} / (1.47 \times 42.6 \text{ sec}) \\ = 4.8 \text{ MPH}$$

Spray nozzles are spaced at 30 inches. Using the formula acreage output rates to nozzle output, application will be about 0.364 gallons per minute per nozzle.

$$\text{GPM} = (15 \text{ GPA} \times 4.8 \text{ MPH} \times 30 \text{ inches}) \\ / 5940 = 0.364 \text{ GPM}$$

Experience shows that the pump can handle this volume and nozzles are rated for this application. Field application is now ready.

The nozzle output now can be checked at the field's edge. Once adjustments are made and each nozzle checks within 5 percent of the desired output, fill the tank with pesticide and water.

Ten acres should be covered by the time the half-tank level is reached using the example above.

A standard nozzle with a flow rate of 0.4 gallons per minute at 40 psi is easy to obtain. The 15-gallon per acre application rate can be obtained by operating the sprayer at the recommended 40 psi and a higher ground speed.

$$\text{MPH} = (\text{GPM} \times 5940) / (\text{GPA} \times w) \\ = (0.4 \text{ GPM} \times 5940) / (15 \text{ GPA} \times 30 \text{ in}) \\ = 5.3 \text{ MPH}$$

Or the ground speed can be kept constant at 4.8 miles per hour, and the nozzle pressure reduced using the following relationship.

$$\text{Pressure new} / \text{pressure rated} = \\ (\text{GPM desired} / \text{GPM rated})^2 = \\ \text{Pressure new} / 40 \text{ psi} = \\ (.364 \text{ GPM} / .4 \text{ GPM})^2$$

The new pressure is 33 psi. Use small adjustments in pressure to obtain the desired nozzle flow rate within the recommended operating pressure. Operating a nozzle at excessively high pressures will produce small spray droplets susceptible to drift. Operating at excessively low pressures produces larger, less-effective spray droplets and poor spray pattern uniformity down the length of the boom.

If calibrating with water and spraying solutions that are heavier or lighter than

Table 1: Spraying solution conversion factors.

Weight of solution (per gallon)	Specific gravity	Conversion factors
7.0 lbs	.84	.92
8.0 lbs	.96	.98
8.3 lbs*	1.00	1.00
9.0 lbs	1.08	1.04
10.0 lbs	1.20	1.10
11.0 lbs	1.32	1.15
12.0 lbs	1.44	1.20
14.0 lbs	1.68	1.30
*Suitable for most water-soluble pesticides.		

water (8.3 pounds per gallon), use the conversion factors in Table 1.

In the above example, to obtain a nozzle flow rate of 0.364 GPM with a solution that weighs 10 pounds per gallon, the nozzle should produce 0.364 GPM x 1.10 or about 0.40 GPM when spraying water.

Spray System Checks

After all the adjustments are made, fill the sprayer with water and measure the nozzle flow rates by catching the nozzle output for 1 minute. Divide the number of ounces by 128 (128 ounces in a gallon) to obtain the flow rate in gallons per minute. For example, 67 ounces caught in 1 minute produces a flow rate of 67/128 or 0.52 GPM. Another method of measuring nozzle flow rates is with a spray tip tester. Maintaining the desired application rate is essential. Over-application results in wasted pesticide, potential groundwater contamination, and possible crop injury. Under-application can produce ineffective pest control.

Erroneous flow rates can result from damaged, worn or plugged nozzles or strainers, and spray hose restrictions between the pressure gauge and the nozzle. Clean nozzles with a toothbrush, not a pocket knife. Never blow out a nozzle with the mouth.

Check the pressure along the length of the boom. If a large pressure difference is found, look for restrictions or install a larger diameter spray hose (see Table 2). An accurate pressure gauge is worth the extra cost.

Table 2: Pressure drop through various hose sizes.

Flow in GPM	Pressure drop in PSI (in 10-foot length) without couplings				
	1/4" I.D.	3/8" I.D.	1/2" I.D.	3/4" I.D.	1" I.D.
0.5	1.4	.2			
1.0		.7			
1.5		1.4	.4		
2.0		2.4	.6		
2.5		3.4	.9		
3.0			1.2		
4.0			2.0		
5.0			2.9	.4	
6.0			4.0	.6	
8.0				.9	.3
10.0				1.4	.4

Field Checking

Conduct field calibration when spraying the pesticide. Start with the tank full of solution, spray a known distance in the field (at least 3,000 feet) and determine the number of gallons needed to refill the tank. Determine the application rate (GPA) with the following formula.

$$\text{GPA} = (\text{gallons sprayed} \times 43,560) / (\text{Boom width (ft.)} \times \text{distance (ft.)})$$

Spray Distribution Uniformity

Spray distribution uniformity is important for broadcast spraying. Uniform spray coverage eliminates weed streaking and crop injury. Concentrations up to four times the recommended amount can result from non-uniform applications. To obtain even coverage, make sure all the nozzles are the same and are equally spaced along the boom. Check each nozzle to make sure the flow rates are correct. Replace nozzles if the flow rates are 10 percent or more in

error. The boom height should be adjusted to the recommended height (Table 3). Spray boom bounce should be minimized with support members.

Table 3: Nozzle height (inches) for flat-fan nozzles.

Spray angle (degree)	20-inch spacing	30-inch spacing
65	21-23	32-34
73	20-21	27-29
80	17-19	25-27
110	10-12	14-18

Check spray uniformity by spraying water on a concrete surface and observing the amount of streaking that occurs when the water dries. Spray patterns that result in excessive accumulation below the nozzle are produced by:

1. nozzle wear,
2. low boom height,
3. low operating pressure, and
4. large nozzle spacing.

Irregular spray patterns result from damaged nozzle tips, mismatched nozzles and uneven booms.

Pesticide drift is a major concern. In addition to reducing effectiveness, pesticide drift can damage non-target areas. One method to decrease drift is to use a low volatile formulation that is less likely to volatilize and drift.

Pesticide drift also can be controlled by reducing the number of small droplets emitted from the sprayer. Nozzle type, angle and orientation, boom height, and operating pressure can influence the production of driftable drops. A droplet of 100 microns in diameter can drift about 50 feet in a 3 mph breeze; a 10- micron droplet can drift 3,000 feet. Spray thickeners can reduce drift, as can spraying at low temperatures and high humidity.

Useful Formulas and Equivalents

1 acre = 43,560 square feet

1 gallon = 128 fluid ounces

1 pint = 16 fluid ounces

1 pound = 16 ounces of weight (16 fluid ounces of water at 39 degrees Fahrenheit weighs 1 pound)

Gallons per acre = (5,940 x gallons/minute/nozzle) / (MPH x nozzle spacing)

Gallons per minute per nozzle = (gallons/acre x MPH x nozzle spacing) / 5,940

Ounces per minute per nozzle = (gallons/acre x MPH x nozzle spacing x 32) / 1,485

Miles per hour = distance travelled (ft) / (88 x minutes) = distance travelled (ft) / (.47 x seconds)

EXHIBIT 2

From: Dawson Morton [<mailto:dawson@gafr.org>]

Sent: Thursday, July 16, 2015 10:19 AM

To: Hall, Nancy

Subject: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy

Hi Ms. Hall:

I just wanted to confirm again that our client one of the worker's sprayed can speak to an investigator if provision for translation is made. When we spoke last week you said that the Department did not have any spanish-speaking investigators or any means of translation, if that changes please let me know.

Dawson

—

Dawson Morton

Georgia Legal Services, Farmworker Rights Div.

404-463-1633

EXHIBIT 3

GEORGIA LEGAL SERVICES PROGRAM
CENTRAL OFFICE
104 Marietta Street, N.W.
Suite 250
Atlanta, Georgia 30303

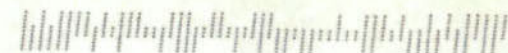
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U.S. POSTAGE®
ZIP 30309 \$ 002
02 1W
0001367658 OCT 0

OCT 07 2015

Director, Office of Civil Rights
U.S. Environmental Protection Agency
Mail Code 1201A
1200 Pennsylvania Avenue, NW
Washington, DC 20460





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 09 2015

Return Receipt Requested

Certified Mail #: 70125 0640 0006 0305 7022

In Reply Refer to:

EPA File No.: 02NO-16-R4

Mr. Dawson Morton
Georgia Legal Services Program
104 Marietta Street
Suite 250
Atlanta, Georgia 30303-2706

Re: Acknowledgment of Receipt of Administrative Correspondence

Dear Mt. Morton:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), received your correspondence on October 1, 2015 via e-mail and on October 7, 2015 via the U.S. Postal Service.

The OCR is responsible for processing and investigating complaints alleging discrimination by programs or activities that receive financial assistance from the EPA. Pursuant to the EPA's nondiscrimination regulations, the OCR will review the complaint for acceptance, rejection, or referral to another Federal agency. Once this jurisdictional review is completed, the OCR will notify you about its decision.

In the interim, if you have any questions about the status of this complaint, please contact Samuel Peterson of my staff at (202) 564-5393 or via email at peterson.sam@epa.gov.

Sincerely,

A handwritten signature in blue ink, reading "Jeryl W. Covington", is positioned above the typed name.

Jeryl W. Covington
Acting Assistant Director
Office of Civil Rights

cc: Elise Packard
Associate General Counsel
Civil Rights & Finance Law Office

Vickie Tellis
Associate Regional Administrator
Acting Deputy Civil Rights Official, Region IV



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

November 17, 2015

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested

Certified Mail #: 7015 0640 0006 0305 7183

In Reply Refer to:

EPA File No.: 02NO-16-R4

Mr. Eric Olsen,
Pesticide Program Manager
Georgia Department of Agriculture
19 Martin Luther King Jr. Drive SW Room 410
Atlanta, Georgia 30334

Re: Acknowledgment of Receipt of Administrative Correspondence

Dear Mr. Olsen:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), received a correspondence on October 1, 2015 via e-mail and on October 7, 2015 via the U.S. Postal Service, alleging that the Georgia Department of Agriculture engaged in discriminatory activity due to a failure to provide translation services on or about September 29, 2015.

The OCR is responsible for processing and investigating complaints alleging discrimination by programs or activities that receive financial assistance from the EPA. Pursuant to the EPA's nondiscrimination regulations, the OCR will review the correspondence as a complaint for acceptance, rejection, or referral to another Federal agency. Once this jurisdictional review is completed, the OCR will notify you about its decision.

In the interim, if you have any questions about the status of this correspondence, please contact Samuel Peterson of my staff at (202) 564-5393 or via email at peterson.samuel@epa.gov.

Sincerely,

A handwritten signature in blue ink that reads "Jeryl W. Covington".

Jeryl W. Covington
Acting Assistant Director
Office of Civil Rights

cc: Elise Packard
Associate General Counsel, Civil Rights & Finance Law Office

Kenneth Lapierre
Assistant Regional Administrator, Deputy Civil Rights Official, Region IV



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
CIVIL RIGHTS

July 6, 2016

Return Receipt Requested

Certified Mail#: 7015 1520 0002 0019 1987

In Reply Refer to:

EPA File No.: 02NO-16-R4

Mr. Dawson Morton
Farmworker Rights Division of
Georgia Legal Services Program
104 Marietta Street
Suite 250
Atlanta, Georgia 30303-2076

Re: Notification of Acceptance of Administrative Complaint

Dear Mr. Morton:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), is accepting your administrative complaint filed against the Georgia Department of Agriculture (GDA) received by EPA on October 7, 2015. The complaint generally alleges that GDA failed to provide language interpretation services to a national origin minority, limited-English proficient worker during certain important proceedings, in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 United States Code 2000d *et seq.*, and the EPA's nondiscrimination regulations found at 40 Code of Federal Regulations (C.F.R.) Part 7.

Pursuant to the EPA's nondiscrimination regulations, OCR conducts a preliminary review of administrative complaints for acceptance, rejection or referral to the appropriate agency. (40 C.F.R. §7.120(d)(1)). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. (C.F.R. § 7.120(b)(1)) Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (*e.g.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act. (40 C.F.R. § 7.120 (b)(2)) Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. (40 C.F.R. § 7.15)

After careful consideration, OCR has determined that the complaint meets the four jurisdictional requirements as stated above. First, the complaint is in writing. Second, the complaint describes allegedly discriminatory acts that may violate the EPA's nondiscrimination regulations. Third, the alleged discriminatory acts occurred within 180 days of the filing of the complaint. And finally, the complaint was filed against ADEQ, a recipient of EPA financial assistance at the time of the alleged discriminatory acts.

Accordingly, OCR will investigate the following:

Whether GDA's operation of its Worker Protection Standards Program promulgated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136w discriminated against limited English proficient workers including Latino workers, on the basis of national origin, in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation.


The decision to investigate the issues above is not a decision on the merits. OCR is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with you and the recipient, if appropriate, and determine next steps utilizing its internal procedures. In the intervening time, OCR will provide GDA with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving their copy of the letter. *See* 40 C.F.R. 7.120(d)(1)(ii-iii).

The EPA's nondiscrimination regulation provides that OCR will attempt to resolve complaints informally whenever possible. *See* 40 C.F.R. § 7.120(d)(2). Accordingly, OCR is willing to discuss, at any point during the process, offers to informally resolve the complaint, and may, to the extent appropriate, offer alternative dispute resolution (ADR) as described at <http://www.epa.gov/ocr/frequently-asked-questions-about-use-alternative-dispute-resolution-resolving-title-vi>. We may be contacting both you and GDA's representative in the future to discuss your potential interest in pursuing ADR, as well GDA's interest in entering into informal resolution discussions. We invite you to review OCR's Interim Case Resolution Manual at http://www.epa.gov/sites/production/files/2015-12/documents/ocr_crm_final.pdf for a fuller explanation of the complaint resolution process.

Finally, we would like to remind you that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with OCR. OCR would investigate such a complaint if the situation warranted.

If you have questions regarding this letter, please contact Samuel Peterson, Case Manager, at 202-564-5393, via electronic mail at peterson.samuel@epa.gov, or by mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460-1000.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. S. Dorka', written in a cursive style.

Lilian S. Dorka
Acting Director
Office of Civil Rights

cc: Elise Packard
Associate General Counsel,
Civil Rights & Finance Law Office

Ken Lapierre
Assistant Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 4

Oscar Morales
Associate Assistant Administrator
Deputy Civil Rights Official
U.S. EPA Office of Chemical Safety and Pollution Prevention



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 6, 2016

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested

Certified Mail#: 7015 1520 0002 0019 1994

In Reply Refer to:

EPA File No.: 02NO-16-R4

Mr. Eric Olsen
Pesticide Program Manager
Georgia Department of Agriculture
19 Martin Luther King Jr. Drive SW, Room 410
Atlanta, Georgia 30334

Re: Acceptance of Administrative Complaint

Dear Mr. Olsen:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), is accepting for investigation an administrative complaint filed against the Georgia Department of Agriculture (GDA) by the Farmworker Rights Division of Georgia Legal Services Program, received by OCR on October 1, 2015. The complaint generally alleges that GDA failed to provide language interpretation services to a national origin minority, limited-English proficient worker during certain important proceedings, in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 United States Code 2000d *et seq.*, and the EPA's nondiscrimination regulations found at 40 Code of Federal Regulations (C.F.R.) Part 7.

Pursuant to the EPA's nondiscrimination regulations, OCR conducts a preliminary review of administrative complaints for acceptance, rejection or referral to the appropriate agency. (40 C.F.R. § 7.120(d)(1)). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. (C.F.R. § 7.120(b)(1)) Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (*e.g.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act. (40 C.F.R. § 7.120 (b)(2)) Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. (40 C.F.R. § 7.15)

After careful consideration, OCR has determined that the complaint meets the four jurisdictional requirements as stated above. First, the complaint is in writing. Second, the complaint describes allegedly discriminatory acts that may violate the EPA's nondiscrimination regulations. Third, the alleged discriminatory acts occurred within 180 days of the filing of the complaint. And

finally, the complaint was filed against ADEQ, a recipient of EPA financial assistance at the time of the alleged discriminatory acts.

Accordingly, OCR will investigate the following:

Whether GDA's operation of its Worker Protection Standards Program promulgated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136w discriminated against limited English proficient workers including Latino workers, on the basis of national origin, in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation.

The decision to investigate the issues above is not a decision on the merits. OCR is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with you and the complainant, if appropriate, and determine next steps utilizing its internal procedures. In the intervening time, OCR will provide GDA with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving their copy of the letter. *See* 40 C.F.R. 7.120(d)(1)(ii-iii).

The EPA's nondiscrimination regulation provides that OCR will attempt to resolve complaints informally whenever possible. *See* 40 C.F.R. § 7.120(d)(2). Accordingly, OCR is willing to discuss, at any point during the process, offers to informally resolve the complaint, and may, to the extent appropriate, offer alternative dispute resolution (ADR) as described at <http://www.epa.gov/ocr/frequently-asked-questions-about-use-alternative-dispute-resolution-resolving-title-vi>. We may be contacting both you and the complainant in the future to discuss your potential interest in pursuing ADR, as well GDA's interest in entering into informal resolution discussions. We invite you to review OCR's Interim Case Resolution Manual at http://www.epa.gov/sites/production/files/2015-12/documents/ocr_crm_final.pdf for a fuller explanation of the complaint resolution process. Please provide OCR with the name and contact information of your designated representative at your earliest convenience.

Finally, we would like to remind you that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with OCR. OCR would investigate such a complaint if the situation warranted.

If you have questions regarding this letter, please contact Samuel Peterson, Case Manager, at 202-564-5393, via electronic mail at peterson.samuel@epa.gov, or by mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460-1000.

Sincerely,

A handwritten signature in black ink, appearing to read "L. S. Dorka", written over a horizontal line.

Lilian S. Dorka
Acting Director
Office of Civil Rights

cc: Elise Packard
Associate General Counsel,
Civil Rights & Finance Law Office

Ken Lapierre
Assistant Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 4

Oscar Morales
Associate Assistant Administrator
Deputy Civil Rights Official
U.S. EPA Office of Chemical Safety and Pollution Prevention



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHT COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

February 8, 2017

Return Receipt Requested

Certified Mail# 70153010000112675287

In Reply Refer to:

EPA File No. 02-NO-16-R4

Mr. Isaac Raisner
Ms. Solimar Mercado-Spencer
Georgia Legal Service Program
104 Marietta Street, Suite 250
Atlanta, Georgia 30303-2706

Dear Mr. Raisner and Ms. Mercado-Spencer:

This letter is to inform you that the U.S. Environmental Protection Agency's (EPA) External Civil Rights Compliance Office (ECRCO) is resolving this complaint based on the enclosed Informal Resolution Agreement (Agreement) entered into between EPA and the Georgia Department of Agriculture (GDA). On July 6, 2016, EPA accepted your complaint, No. 02NO-16-R4, which alleged discrimination based on national origin in violation of Title VI and the EPA regulation at 40 C.F.R. Part 7 relating to GDA's alleged failure to provide language interpretation services to a national origin minority, limited English proficient worker during certain important proceedings. Specifically, ECRCO accepted for investigation:

Whether GDA's operation of its Worker Protection Standards Program promulgated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136w discriminated against limited English proficient workers including Latino workers, on the basis of national origin, in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation.

During the course of EPA's investigation, GDA agreed to enter into an Informal Resolution Agreement in order to resolve this complaint.¹ The enclosed Agreement is entered into by GDA and the EPA pursuant to the authority granted to EPA under the federal nondiscrimination laws, including Title VI of the Civil Rights Act of 1964, and EPA regulation found at 40 C.F.R. Part 7. It resolves complaint No. 02NO-16-R4 and additional concerns identified by EPA. It is

¹ See ECRCO's Case Resolution Manual regarding informal resolution of complaints, at https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf.

Mr. Isaac Raisner and Ms. Solimar Mercado-Spencer, Page 2

understood that the Agreement does not constitute an admission by GDA or a finding by EPA of violations of 40 C.F.R. Part 7.

The enclosed Agreement does not affect GDA's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulation at 40 C.F.R. Part 7, nor does it affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement. This letter sets forth ECRCO's disposition of the complaint. This letter is not a formal statement of ECRCO policy and should not be relied upon, cited, or construed as such.

If you have any questions, please feel free to contact me at (202) 564-9649, by e-mail at dorka.lilian@epa.gov, or U.S. mail at U.S. EPA, Office of General Counsel, External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460.

Sincerely,



Lilian S. Dorka
Director
External Civil Rights Compliance Office
Office of General Counsel

Cc:

Kenneth Redden
Acting Associate General Counsel
Civil Rights & Finance Law Office
U.S. EPA Office of General Counsel

Vicki Tellis
Acting Assistant Regional Administrator
Acting Deputy Civil Rights Official
U.S. EPA Region 4

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460**



**EXTERNAL CIVIL RIGHT COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL**

**AGREEMENT
between the
GEORGIA DEPARTMENT OF AGRICULTURE
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ECRCO Complaint No. 02NO-16-R4**

I. PURPOSE AND JURISDICTION

Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 (Title VI), and United States Environmental Protection Agency's (EPA) regulation at 40 Code of Federal regulations (C.F.R.) Part 7 prohibit discrimination on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance. The Georgia Department of Agriculture (GDA) is a recipient¹ of federal financial assistance from the EPA and is subject to the provisions of Title VI and 40 C.F.R. Part 7.

On July 6, 2016, EPA accepted complaint No. 02NO-16-R4 brought under Title VI and EPA's regulation at 40 C.F.R. Part 7 that alleges discrimination based on race and national origin in violation of Title VI. GDA has agreed to enter into this Informal Resolution Agreement ("Agreement") in order to resolve said complaint.

This Agreement is entered into by the GDA and the EPA's External Civil Rights Compliance Office (ECRCO).

This Agreement is entered into pursuant to the authority granted EPA under the federal non-discrimination laws, including Title VI of the Civil Rights Act of 1964, and EPA regulation found at 40 C.F.R. Part 7. It resolves complaint No. 02NO-16-R4 and additional concerns identified by EPA. It is understood that this Agreement does not constitute an admission by GDA or a finding by EPA of violations of 40 C.F.R. Part 7.

GDA is committed to carrying out its responsibilities in a nondiscriminatory manner, in accordance with the requirements of Title VI and the other federal non-discrimination laws enforced by EPA regulation at 40 C.F.R. Part 7. The activities detailed in Section III of this Agreement, which GDA has voluntarily agreed to undertake and implement, are in furtherance of this commitment.

¹ Throughout this Agreement, "Recipient" refers to GDA.

II. BACKGROUND

On July 6, 2016, EPA accepted complaint No. 02NO-16-R4. In response to the complaint, EPA initiated an investigation of GDA's compliance with Title VI and the EPA regulation at 40 C.F.R. Part 7. The Agreement herein relates to the resolution of the issue that EPA accepted for investigation in this matter, that GDA's operation of its Worker Protection Standards Program (WPS) promulgated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136w discriminated against limited English proficient (LEP) workers, including Latino workers, on the basis of national origin.

We understand that EPA Region 4 is working with GDA regarding compliance with the WPS unrelated to making the program accessible to limited English proficient communities. This Agreement does not address the efforts undertaken by Region 4 on those substantive WPS issues.

In addition, during the course of the investigation, EPA ECRCO reviewed the requirements of 40 C.F.R. Part 7, Subpart D that are foundational elements of a recipient's non-discrimination program and are required for all recipient programs and activities. These include: the designation of at least one person to coordinate its efforts to comply with its non-discrimination obligations under 40 C.F.R. § 7.85(g); adoption of grievance procedures that assure the prompt and fair resolution of complaints alleging civil rights violations under 40 C.F.R. § 7.90; and, continuing notice of non-discrimination under 40 C.F.R. § 7.95.

III. SPECIFIC GDA COMMITMENTS

GDA agrees to undertake the following commitments and non-discrimination procedural safeguards.

It is ECRCO's understanding that GDA is in the process of reviewing the non-discrimination procedural safeguards and taking steps to bring its program into compliance within the timeframe set out below:

1. Access for Persons with Limited-English Proficiency:

- a. GDA will develop, publish, and implement written procedures to ensure meaningful access to all of GDA's programs and activities by all persons, including access by LEP individuals and individuals with disabilities.
- b. GDA will conduct the appropriate analysis described in EPA's LEP Guidance found at 69 FR 35602 (June 25, 2004) and <http://www.lep.gov> to determine what language services it may need to provide to ensure that LEP individuals can meaningfully participate in the process. GDA should develop a language access plan consistent with the details found in EPA's training module for LEP. <http://www.epa.gov/civilrights/lepaccess.htm>

- c. Within 120 days of the effective date of this Agreement, GDA will forward to EPA a final draft of its written procedures to ensure meaningful access to all of GDA's programs and activities by all persons, including access by persons with LEP. EPA will review the draft procedures and provide any comments within 60 days of receipt.

2. Access for Persons with Disabilities:

- a. GDA will provide at no cost appropriate auxiliary aids and services including, for example, qualified interpreters to individuals who are deaf or hard of hearing, and to other individuals as necessary to ensure effective communication or an equal opportunity to participate fully in the benefits, activities, programs and services provided by GDA in a timely manner and in such a way as to protect the privacy and independence of the individual.
- b. Within 120 days of the effective date of this Agreement, GDA will forward to EPA a final draft of its written procedures to ensure meaningful access to all of GDA's programs and activities by persons with disabilities. EPA will review the draft procedures and provide any comments within 60 days of receipt.

3. Notice of Non-Discrimination under the Federal Non-Discrimination Statutes²

- a. GDA will post a notice of non-discrimination on the GDA website and in general publications that are distributed to the public. In order to ensure effective communication with the public, GDA will ensure that its notice of non-discrimination is accessible to LEP individuals and individuals with disabilities.
- b. The notice will contain, at a minimum, the following statements:
 - i. GDA does not discriminate on the basis of race, color, national origin, disability, age, or sex in the administration of its programs or activities, as required by applicable laws and regulations.
 - ii. GDA is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements of 40 C.F.R. Part 7 (Non-discrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency), including Title VI

² Title VI, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Section 13 of Federal Water Pollution Control Act of 1972, and Title IX of the Education Amendments of 1972 (hereinafter referred to collectively as the federal non-discrimination statutes).

of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972.

- iii. If you have any questions about this notice or any of GDA's non-discrimination programs, policies or procedures, you may contact:

[GDA to INSERT NAME]
Georgia Department of Agriculture
19 Martin Luther King Jr. Drive, S.W.
Atlanta, Georgia 30334-4201
Email address: [insert]

- iv. If you believe that you have been discriminated against with respect to a GDA program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at titlevi@agr.georgia.gov or call 404-586-1152, to learn how and where to file a complaint of discrimination.

- c. Within 30 days of the effective date of this Agreement, GDA will publish its notice of non-discrimination on its website as specified above. GDA will begin publishing its notice of non-discrimination in general publications that are distributed to the public within 180 days of the effective date of this Agreement.

4. Grievance Procedures for Complaints filed under the Federal Non-Discrimination Statutes

- a. GDA will ensure that it has widely and prominently published its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes, and will review them annually to ensure that they remain up to date, in publication at all times, and prominently online, to allow for prompt and appropriate handling of those discrimination complaints.
- b. The grievance procedures will at a minimum address the following:
 - i. Clearly identify the Non-Discriminator Coordinator, including contact information;
 - ii. Explain the role of the Non-Discrimination Coordinator relative to the coordination and oversight of the grievance procedures;
 - iii. State who may file a complaint under the procedures;

- iv. Describe the grievance process;
 - v. Explain that an appropriate, prompt and impartial investigation of any allegations filed under federal non-discrimination statutes will be conducted;
 - vi. State that the preponderance of the evidence standards will be applied during the analysis of the complaint;
 - vii. Contain assurances that retaliation is prohibited and that claims of retaliation will be handled promptly if it occurs;
 - viii. State that written notice will be promptly provided about the outcome of the investigation, including whether discrimination is found and the description of the investigation process.
- c. Within 120 days of the effective date of this Agreement, GDA will forward to ECRCO a final draft of its grievance procedures for review. ECRCO will review the draft procedures and provide any comments within 60 days of receipt.

5. Designation of a Non-Discrimination Coordinator

- a. GDA will ensure that it has designated at least one Non-Discrimination Coordinator to ensure GDA's compliance with the federal non-discrimination statutes.
- b. GDA will ensure the notice and the grievance procedure that it widely publishes contains the title, email address, telephone number, and other contact information of the Non-Discrimination Coordinator. GDA will explain the responsibilities of the Non-Discrimination Coordinator in its grievance procedures adopted pursuant to Section III, Paragraph c., iii of this Agreement.
- c. GDA will ensure that the Non-Discrimination Coordinator's responsibilities include the following:
 - i. Providing information to individuals internally and externally regarding their right to services, aids, benefits, and participation in any GDA program or activity without regard to their race, national origin, color, sex, disability, age or prior opposition to discrimination.
 - ii. Providing notice of GDA's grievance process and the ability to file a discrimination complaint with GDA.

- iii. Maintaining grievance policies and procedures or mechanisms (e.g., an investigation manual) to ensure that all discrimination complaints filed with GDA under federal non-discrimination statutes are processed promptly and appropriately and that meaningful access is provided for persons with LEP and disabilities to GDA programs and activities.
 - iv. Ensuring the tracking of all discrimination complaints filed with GDA under federal non-discrimination statutes including any patterns or systemic problems.
 - v. Conducting a semiannual review of all discrimination complaints filed with the GDA Non-Discrimination Coordinator under federal non-discrimination statutes and/or any other complaints independently investigated by GDA in order to identify and address any patterns or systemic problems.
 - vi. Informing GDA staff regarding the GDA's obligations to comply with federal non-discrimination statutes and serve as a resource on such issues.
 - vii. Ensuring that complainants are updated on the progress of their discrimination complaints filed with GDA under federal non-discrimination statutes and are promptly informed as to any determinations made.
 - viii. Periodically evaluating the efficacy of GDA's efforts to provide services, aids, benefits, and participation in any GDA program or activity without regard to race, national origin, color, sex, disability, age or prior opposition to discrimination.
 - ix. Ensuring appropriate training in the formal and informal processes available to resolve complaints filed under federal non-discrimination statutes.
 - x. Providing or procuring appropriate services to ensure GDA employees are appropriately trained on GDA non-discrimination policies and procedures, as well as the nature of the federal non-discrimination obligations.
- d. The Non-Discrimination Coordinator will not have other responsibilities that create a conflict of interest (e.g., serving as the Non-Discrimination Coordinator as well GDA legal advisor or representative on civil rights issues).

- e. Within 60 days of the effective date of this Agreement, GDA will have designated a Non-Discrimination Coordinator and provided appropriate public notice of such as specified above.
- f. Within 30 days of appointment of a Non-Discrimination Coordinator, GDA will forward to ECRCO proof that it has designated a Non-Discrimination Coordinator and that the Non-Discrimination Coordinator has assumed the responsibilities identified in subsection 5(c) above. As proof, ECRCO will accept from GDA a signed statement from the incumbent acknowledging the Non-Discrimination Coordinator responsibilities as outlined in subsection 5(c) above, together with a signed statement from GDA that it has (1) designated the identified incumbent as the Non-Discrimination Coordinator and that it will (2) oversee the Non-Discrimination Coordinator's responsibilities.

6. *Public Participation*

- a. ECRCO recognizes that GDA does not currently administer an environmental permitting program which implicates EPA ECRCO's Public Participation Guidance found at 71 FR 14,207, 14,210 (March 21, 2006). However, should GDA administer such a program in the future, GDA will implement a public involvement process that is available to all persons regardless of race, color, national origin (including LEP), age, disability, and sex; and will develop and implement a public participation policy that contains the following:
 - i. An overview of the Recipient's plan of action for addressing the community's needs and concerns;
 - ii. A description of the historical and demographic background of the community to be included in the public participation process;
 - iii. A contact list of agency officials with phone numbers and email addresses to allow the public to communicate via phone or internet;
 - iv. A detailed plan of action (outreach activities) Recipient will take to address concerns;
 - v. A contingency plan for unexpected events;
 - vi. Location(s) where public meetings may be held; and
 - vii. Contact names for obtaining language assistance services for LEP persons, including, translation of documents and/or interpreters for meetings;

- viii. Appropriate local media contacts (based on the culture and linguistic needs of the community); and
 - ix. Location of the information repository.
- b. Should GDA begin administering environmental permitting programs, within 120 days of doing so GDA will forward to EPA a final draft of its public participation process/procedures for review. EPA will review the draft process/procedures and provide any comments within 60 days of receipt.

7. Training

- a. Within 90 days after implementing the deliverables identified in this Agreement, including fulfilling the requirements for a Non-Discrimination Coordinator, Non-Discrimination Notice, Grievance Procedures, and Public Participation Process/Procedures, GDA will certify that all appropriate staff have been trained on these processes and procedures and on the nature of the federal non-discrimination obligations.
- b. Within 120 days after execution of this Agreement, GDA also will have a plan in place to ensure that such training is a routine part of annual or refresher training to appropriate staff.

IV. GENERAL

- 1. In consideration of GDA's implementation of commitments and actions described in Section III of this Agreement, EPA will end its investigation of the complaint No. 02NO-16-R4 and not issue a decision containing findings on the merits of the complaint.
- 2. EPA will monitor the implementation of the commitments in this Agreement to ensure they are fully implemented. Once the terms of this Agreement are satisfied, EPA will issue a letter documenting closure of its monitoring actions in complaint No. 02NO-16-R4 and closure of the complaint as of the date of that letter.
- 3. EPA will, upon request, provide technical assistance to GDA regarding any of the civil rights obligations previously referenced.
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5. GDA will report the completion of each commitment identified under Section III, consistent with the timeframes in Section III, by certified mail to the Director, EPA Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460, within 30 days of the completion by GDA of each commitment.

V. COMPUTATION OF TIME AND NOTICE

1. As used in this Agreement, "day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
2. Service of any documents required by this Agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.
3. Documents submitted by GDA to EPA shall be sent to the Director, U.S. EPA Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460.
4. Documents submitted by EPA to GDA shall be sent to the Georgia Department of Agriculture, Legal Services Division, 19 Martin Luther King, Jr. Drive, S.W., Atlanta, Georgia 30334.

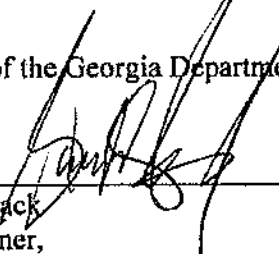
VI. EFFECT OF THE AGREEMENT

1. GDA understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, GDA understands that during the monitoring of this Agreement, if necessary, EPA may visit GDA, interview staff, and request such additional reports or data as are necessary for EPA to determine whether GDA has fulfilled the terms of this Agreement and is in compliance with the EPA regulation implementing the federal non-discrimination requirements in 40 C.F.R. Part 7, which were at issue in this case.
2. GDA understands that EPA will close its monitoring of this Agreement when EPA determines that GDA has fully implemented this Agreement and that a failure to satisfy any term in this agreement may result in EPA re-opening the investigation.
3. If either Party desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to GDA's program or authorities, or for other good cause, the Party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstance justifying the proposed modification. Any modification(s) to this

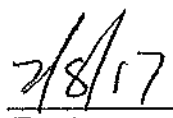
Agreement shall take effect only upon written agreement by the Commissioner of GDA and the Director of EPA.

4. This Agreement constitutes the entire Agreement between GDA and EPA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any commitment or term of this Agreement, except as specifically agreed to by GDA and EPA in accordance with the provisions of Section VI. Paragraph c above.
5. This Agreement does not affect GDA's continuing responsibility to comply with Title VI or other federal non-discrimination laws and the EPA's regulation at 40 CFR Part 7, including § 7.85, nor does it affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.
6. The effective date of this Agreement is the date by which both Parties have signed the Agreement. This Agreement may be signed in counterparts. The Commissioner in his capacity as an official of GDA, has the authority to enter into this Agreement for purposes of carrying out the activities listed in these paragraphs. The Director of ECRCO has the authority to enter into this Agreement.

On behalf of the Georgia Department of Agriculture,




Gary W. Black
Commissioner,
Georgia Department of Agriculture

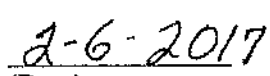


(Date)

On behalf of the U.S. Environmental Protection Agency,



Lilian S. Dorka
Director,
External Civil Rights Compliance Office, Office of General Counsel
U.S. Environmental Protection Agency



(Date)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHT COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

February 8, 2017

Return Receipt Requested

Certified Mail#70153010000112675294

In Reply Refer to:

EPA File No. 04-NO-16-R4

Gary W. Black, Commissioner
Georgia Department of Agriculture
19 Martin Luther King, Jr. Drive, S.W. Room 227
Atlanta, Georgia 30334

Dear Commissioner Black:

This letter is to inform you that the U.S. Environmental Protection Agency's (EPA) External Civil Rights Compliance Office (ECRCO) is resolving this complaint based on the enclosed Informal Resolution Agreement (Agreement) entered into between EPA and the Georgia Department of Agriculture (GDA). On July 6, 2016, EPA accepted complaint, No. 02NO-16-R4, which alleged discrimination based on national origin in violation of Title VI and the EPA regulation at 40 C.F.R. Part 7 relating to GDA's alleged failure to provide language interpretation services to a national origin minority, limited English proficient worker during certain important proceedings. Specifically, ECRCO accepted for investigation:

Whether GDA's operation of its Worker Protection Standards Program promulgated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136w discriminated against limited English proficient workers including Latino workers, on the basis of national origin, in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation.

During the course of EPA's investigation, GDA agreed to enter into an Informal Resolution Agreement in order to resolve this complaint.¹ The enclosed Agreement is entered into by GDA and the EPA pursuant to the authority granted to EPA under the federal nondiscrimination laws, including Title VI of the Civil Rights Act of 1964, and EPA regulation found at 40 C.F.R. Part 7. It resolves complaint No. 02NO-16-R4 and additional concerns identified by EPA. It is understood that the Agreement does not constitute an admission by GDA or a finding by EPA of violations of 40 C.F.R. Part 7.

¹ See ECRCO's Case Resolution Manual regarding informal resolution of complaints, at https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf.

Commissioner Gary W. Black, page 2

The enclosed Agreement does not affect GDA's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulation at 40 C.F.R. Part 7, nor does it affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement. This letter sets forth ECRCO's disposition of the complaint. This letter is not a formal statement of ECRCO policy and should not be relied upon, cited, or construed as such.

ECRCO is committed to working with GDA as it implements the provisions of the Agreement. ECRCO appreciates GDA's cooperation in this matter and its efforts to ensure that GDA has in place the appropriate foundational elements of a non-discrimination program. If you have any questions, please feel free to contact me at (202) 564-9649, by e-mail at dorka.lilian@epa.gov, or U.S. mail at U.S. EPA, Office of General Counsel, External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460.

Sincerely,



Lilian S. Dorka
Director
External Civil Rights Compliance Office
Office of General Counsel

Cc:

Ashley Sellers
Director of Legal Services
Georgia Department of Agriculture

Kenneth Redden
Acting Associate General Counsel
Civil Rights & Finance Law Office
U.S. EPA Office of General Counsel

Vicki Tellis
Acting Assistant Regional Administrator
Acting Deputy Civil Rights Official
U.S. EPA Region 4

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHT COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

AGREEMENT
between the
GEORGIA DEPARTMENT OF AGRICULTURE
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ECRCO Complaint No. 02NO-16-R4

I. PURPOSE AND JURISDICTION

Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 (Title VI), and United States Environmental Protection Agency's (EPA) regulation at 40 Code of Federal regulations (C.F.R.) Part 7 prohibit discrimination on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance. The Georgia Department of Agriculture (GDA) is a recipient¹ of federal financial assistance from the EPA and is subject to the provisions of Title VI and 40 C.F.R. Part 7.

On July 6, 2016, EPA accepted complaint No. 02NO-16-R4 brought under Title VI and EPA's regulation at 40 C.F.R. Part 7 that alleges discrimination based on race and national origin in violation of Title VI. GDA has agreed to enter into this Informal Resolution Agreement ("Agreement") in order to resolve said complaint.

This Agreement is entered into by the GDA and the EPA's External Civil Rights Compliance Office (ECRCO).

This Agreement is entered into pursuant to the authority granted EPA under the federal non-discrimination laws, including Title VI of the Civil Rights Act of 1964, and EPA regulation found at 40 C.F.R. Part 7. It resolves complaint No. 02NO-16-R4 and additional concerns identified by EPA. It is understood that this Agreement does not constitute an admission by GDA or a finding by EPA of violations of 40 C.F.R. Part 7.

GDA is committed to carrying out its responsibilities in a nondiscriminatory manner, in accordance with the requirements of Title VI and the other federal non-discrimination laws enforced by EPA regulation at 40 C.F.R. Part 7. The activities detailed in Section III of this Agreement, which GDA has voluntarily agreed to undertake and implement, are in furtherance of this commitment.

¹ Throughout this Agreement, "Recipient" refers to GDA.

II. BACKGROUND

On July 6, 2016, EPA accepted complaint No. 02NO-16-R4. In response to the complaint, EPA initiated an investigation of GDA's compliance with Title VI and the EPA regulation at 40 C.F.R. Part 7. The Agreement herein relates to the resolution of the issue that EPA accepted for investigation in this matter, that GDA's operation of its Worker Protection Standards Program (WPS) promulgated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136w discriminated against limited English proficient (LEP) workers, including Latino workers, on the basis of national origin.

We understand that EPA Region 4 is working with GDA regarding compliance with the WPS unrelated to making the program accessible to limited English proficient communities. This Agreement does not address the efforts undertaken by Region 4 on those substantive WPS issues.

In addition, during the course of the investigation, EPA ECRCO reviewed the requirements of 40 C.F.R. Part 7, Subpart D that are foundational elements of a recipient's non-discrimination program and are required for all recipient programs and activities. These include: the designation of at least one person to coordinate its efforts to comply with its non-discrimination obligations under 40 C.F.R. § 7.85(g); adoption of grievance procedures that assure the prompt and fair resolution of complaints alleging civil rights violations under 40 C.F.R. § 7.90; and, continuing notice of non-discrimination under 40 C.F.R. § 7.95.

III. SPECIFIC GDA COMMITMENTS

GDA agrees to undertake the following commitments and non-discrimination procedural safeguards.

It is ECRCO's understanding that GDA is in the process of reviewing the non-discrimination procedural safeguards and taking steps to bring its program into compliance within the timeframe set out below:

1. Access for Persons with Limited-English Proficiency:

- a. GDA will develop, publish, and implement written procedures to ensure meaningful access to all of GDA's programs and activities by all persons, including access by LEP individuals and individuals with disabilities.
- b. GDA will conduct the appropriate analysis described in EPA's LEP Guidance found at 69 FR 35602 (June 25, 2004) and <http://www.lep.gov> to determine what language services it may need to provide to ensure that LEP individuals can meaningfully participate in the process. GDA should develop a language access plan consistent with the details found in EPA's training module for LEP. <http://www.epa.gov/civilrights/lepaccess.htm>

- c. Within 120 days of the effective date of this Agreement, GDA will forward to EPA a final draft of its written procedures to ensure meaningful access to all of GDA's programs and activities by all persons, including access by persons with LEP. EPA will review the draft procedures and provide any comments within 60 days of receipt.

2. Access for Persons with Disabilities:

- a. GDA will provide at no cost appropriate auxiliary aids and services including, for example, qualified interpreters to individuals who are deaf or hard of hearing, and to other individuals as necessary to ensure effective communication or an equal opportunity to participate fully in the benefits, activities, programs and services provided by GDA in a timely manner and in such a way as to protect the privacy and independence of the individual.
- b. Within 120 days of the effective date of this Agreement, GDA will forward to EPA a final draft of its written procedures to ensure meaningful access to all of GDA's programs and activities by persons with disabilities. EPA will review the draft procedures and provide any comments within 60 days of receipt.

3. Notice of Non-Discrimination under the Federal Non-Discrimination Statutes²

- a. GDA will post a notice of non-discrimination on the GDA website and in general publications that are distributed to the public. In order to ensure effective communication with the public, GDA will ensure that its notice of non-discrimination is accessible to LEP individuals and individuals with disabilities.
- b. The notice will contain, at a minimum, the following statements:
 - i. GDA does not discriminate on the basis of race, color, national origin, disability, age, or sex in the administration of its programs or activities, as required by applicable laws and regulations.
 - ii. GDA is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements of 40 C.F.R. Part 7 (Non-discrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency), including Title VI

² Title VI, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Section 13 of Federal Water Pollution Control Act of 1972, and Title IX of the Education Amendments of 1972 (hereinafter referred to collectively as the federal non-discrimination statutes).

of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972.

- iii. If you have any questions about this notice or any of GDA's non-discrimination programs, policies or procedures, you may contact:

[GDA to INSERT NAME]
Georgia Department of Agriculture
19 Martin Luther King Jr. Drive, S.W.
Atlanta, Georgia 30334-4201
Email address: [insert]

- iv. If you believe that you have been discriminated against with respect to a GDA program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at titlevi@agr.georgia.gov or call 404-586-1152, to learn how and where to file a complaint of discrimination.

- c. Within 30 days of the effective date of this Agreement, GDA will publish its notice of non-discrimination on its website as specified above. GDA will begin publishing its notice of non-discrimination in general publications that are distributed to the public within 180 days of the effective date of this Agreement.

4. Grievance Procedures for Complaints filed under the Federal Non-Discrimination Statutes

- a. GDA will ensure that it has widely and prominently published its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes, and will review them annually to ensure that they remain up to date, in publication at all times, and prominently online, to allow for prompt and appropriate handling of those discrimination complaints.
- b. The grievance procedures will at a minimum address the following:
 - i. Clearly identify the Non-Discriminator Coordinator, including contact information;
 - ii. Explain the role of the Non-Discrimination Coordinator relative to the coordination and oversight of the grievance procedures;
 - iii. State who may file a complaint under the procedures;

- iv. Describe the grievance process;
 - v. Explain that an appropriate, prompt and impartial investigation of any allegations filed under federal non-discrimination statutes will be conducted;
 - vi. State that the preponderance of the evidence standards will be applied during the analysis of the complaint;
 - vii. Contain assurances that retaliation is prohibited and that claims of retaliation will be handled promptly if it occurs;
 - viii. State that written notice will be promptly provided about the outcome of the investigation, including whether discrimination is found and the description of the investigation process.
- c. Within 120 days of the effective date of this Agreement, GDA will forward to ECRCO a final draft of its grievance procedures for review. ECRCO will review the draft procedures and provide any comments within 60 days of receipt.

5. Designation of a Non-Discrimination Coordinator

- a. GDA will ensure that it has designated at least one Non-Discrimination Coordinator to ensure GDA's compliance with the federal non-discrimination statutes.
- b. GDA will ensure the notice and the grievance procedure that it widely publishes contains the title, email address, telephone number, and other contact information of the Non-Discrimination Coordinator. GDA will explain the responsibilities of the Non-Discrimination Coordinator in its grievance procedures adopted pursuant to Section III, Paragraph c., iii of this Agreement.
- c. GDA will ensure that the Non-Discrimination Coordinator's responsibilities include the following:
 - i. Providing information to individuals internally and externally regarding their right to services, aids, benefits, and participation in any GDA program or activity without regard to their race, national origin, color, sex, disability, age or prior opposition to discrimination.
 - ii. Providing notice of GDA's grievance process and the ability to file a discrimination complaint with GDA.

- iii. Maintaining grievance policies and procedures or mechanisms (e.g., an investigation manual) to ensure that all discrimination complaints filed with GDA under federal non-discrimination statutes are processed promptly and appropriately and that meaningful access is provided for persons with LEP and disabilities to GDA programs and activities.
 - iv. Ensuring the tracking of all discrimination complaints filed with GDA under federal non-discrimination statutes including any patterns or systemic problems.
 - v. Conducting a semiannual review of all discrimination complaints filed with the GDA Non-Discrimination Coordinator under federal non-discrimination statutes and/or any other complaints independently investigated by GDA in order to identify and address any patterns or systemic problems.
 - vi. Informing GDA staff regarding the GDA's obligations to comply with federal non-discrimination statutes and serve as a resource on such issues.
 - vii. Ensuring that complainants are updated on the progress of their discrimination complaints filed with GDA under federal non-discrimination statutes and are promptly informed as to any determinations made.
 - viii. Periodically evaluating the efficacy of GDA's efforts to provide services, aids, benefits, and participation in any GDA program or activity without regard to race, national origin, color, sex, disability, age or prior opposition to discrimination.
 - ix. Ensuring appropriate training in the formal and informal processes available to resolve complaints filed under federal non-discrimination statutes.
 - x. Providing or procuring appropriate services to ensure GDA employees are appropriately trained on GDA non-discrimination policies and procedures, as well as the nature of the federal non-discrimination obligations.
- d. The Non-Discrimination Coordinator will not have other responsibilities that create a conflict of interest (e.g., serving as the Non-Discrimination Coordinator as well GDA legal advisor or representative on civil rights issues).

- e. Within 60 days of the effective date of this Agreement, GDA will have designated a Non-Discrimination Coordinator and provided appropriate public notice of such as specified above.
- f. Within 30 days of appointment of a Non-Discrimination Coordinator, GDA will forward to ECRCO proof that it has designated a Non-Discrimination Coordinator and that the Non-Discrimination Coordinator has assumed the responsibilities identified in subsection 5(c) above. As proof, ECRCO will accept from GDA a signed statement from the incumbent acknowledging the Non-Discrimination Coordinator responsibilities as outlined in subsection 5(c) above, together with a signed statement from GDA that it has (1) designated the identified incumbent as the Non-Discrimination Coordinator and that it will (2) oversee the Non-Discrimination Coordinator's responsibilities.

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IV. GENERAL

- 1. In consideration of GDA's implementation of commitments and actions described in Section III of this Agreement, EPA will end its investigation of the complaint No. 02NO-16-R4 and not issue a decision containing findings on the merits of the complaint.
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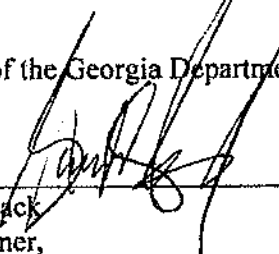
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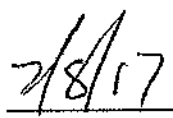
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On behalf of the Georgia Department of Agriculture,

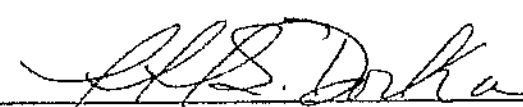


Gary W. Black
Commissioner,
Georgia Department of Agriculture

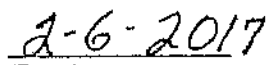


(Date)

On behalf of the U.S. Environmental Protection Agency,



Lilian S. Dorka
Director,
External Civil Rights Compliance Office, Office of General Counsel
U.S. Environmental Protection Agency



(Date)

**AGENCIA DE PROTECCIÓN AMBIENTAL DE ESTADOS UNIDOS
WASHINGTON, D. C. 20460**



OFICINA DE CUMPLIMIENTO
DE LOS DERECHOS CIVILES EXTERNOS
OFICINA DEL ABOGADO GENERAL

**ACUERDO
entre el
DEPARTAMENTO DE AGRICULTURA DE GEORGIA
y la
AGENCIA DE PROTECCIÓN AMBIENTAL DE ESTADOS UNIDOS
ECRCO, queja n.º 02NO-16-R4**

I. PROPÓSITO Y JURISDICCIÓN

El Título VI de la Ley de Derechos Civiles de 1964, 42 U. S. C. §§ 2000d a 2000d-7 (Título VI), y la reglamentación de la Agencia de Protección Ambiental (EPA) de Estados Unidos correspondiente al Título 40 del Código de Reglamentaciones Federales (C. F. R.), Parte 7, prohíben la discriminación sobre la base de la raza, el color o el origen nacional en cualquier programa o actividad que reciba asistencia financiera federal. El Departamento de Agricultura de Georgia (GDA) es uno de los destinatarios¹ de la asistencia financiera federal de la EPA y está sujeto a las disposiciones del Título VI y del Título 40 del C. F. R., Parte 7.

El 6 de julio de 2016, la EPA aceptó la queja n.º 02NO-16-R4 presentada en virtud del Título VI y de la reglamentación de la EPA correspondiente al Título 40 del C. F. R., Parte 7, que alega discriminación sobre la base de la raza y el origen nacional, lo que infringe el Título VI. El GDA ha aceptado participar en este Acuerdo de Resolución Informal (“Acuerdo”) a fin de resolver dicha queja.

Este Acuerdo se celebra entre el GDA y la Oficina de Cumplimiento de los Derechos Civiles Externos (ECRCO) de la EPA.

Este acuerdo se realiza conforme a la autoridad concedida a la EPA en virtud de las leyes de no discriminación federales, entre ellas, el Título VI de la Ley de Derechos Civiles de 1964 y la reglamentación de la EPA correspondiente al Título 40 del C. F. R., Parte 7. Es una resolución de la queja n.º 02NO-16-R4 y de otras inquietudes identificadas por la EPA. Se entiende que este Acuerdo no constituye la aceptación por parte del GDA ni el hallazgo por parte de la EPA de ninguna infracción del Título 40 del C. F. R., Parte 7.

¹ En todo este acuerdo, “Destinatario” hace referencia al GDA.

El GDA tiene el compromiso de ejecutar sus responsabilidades de forma no discriminatoria, de acuerdo con los requisitos del Título VI y las otras leyes de no discriminación federales impuestas por la reglamentación de la EPA correspondiente al Título 40 del C. F. R., Parte 7. Las actividades descritas en la Sección III de este acuerdo, que el GDA ha aceptado adoptar e implementar de forma voluntaria, promueven este compromiso.

II. CONTEXTO

El 6 de julio de 2016, la EPA aceptó la queja n.º 02NO-16-R4. En respuesta a la queja, la EPA comenzó una investigación acerca del cumplimiento por parte del GDA del Título VI y de la reglamentación de la EPA correspondiente al Título 40 del C. F. R., Parte 7. El presente Acuerdo se relaciona con la resolución del problema que la EPA aceptó investigar, con respecto a que la operación del Programa de Estándares de Protección de los Trabajadores (WPS) promulgado en virtud de la Ley Federal de Insecticidas, Fungicidas y Rodenticidas (FIFRA), 7 U. S. C. § 136w, discriminaba a los trabajadores con conocimientos limitados del idioma inglés, incluidos los trabajadores latinos, sobre la base del origen nacional.

Entendemos que la Región 4 de la EPA está trabajando con el GDA acerca del cumplimiento de los Estándares de Protección de los Trabajadores no relacionados con el hecho de permitir que el programa sea accesible para las comunidades con conocimientos limitados del idioma inglés. Este Acuerdo no aborda las tareas llevadas a cabo por la Región 4 acerca de esos importantes temas relacionados con los Estándares de Protección de los Trabajadores.

Además, durante el curso de la investigación, la ECRCO de la EPA revisó los requisitos del Título 40 del C. F. R., Parte 7, Subparte D, que son elementos constitutivos de un programa de no discriminación de los destinatarios, además de ser obligatorios para todas las actividades y los programas de los destinatarios. Estos incluyen lo siguiente: la designación de al menos una persona que coordine las tareas de cumplimiento de las obligaciones de no discriminación según el Título 40 del C. F. R. § 7.85(g); la adopción de procedimientos de resolución de conflictos que garanticen la resolución justa y sin demora de las quejas que alegan infracciones de los derechos civiles según el Título 40 del C. F. R. § 7.90; y la publicación continua de avisos de no discriminación según el Título 40 del C. F. R. § 7.95.

III. COMPROMISOS ESPECÍFICOS DEL GDA

El GDA acepta asumir los siguientes compromisos y medidas de protección procedimentales de no discriminación.

La ECRCO interpreta que el GDA está en proceso de revisar las medidas de protección procedimentales y de organizar los pasos para confirmar el cumplimiento del programa en el plazo indicado a continuación:

1. Acceso para las personas con conocimientos limitados del idioma inglés:

- a. El GDA desarrollará, publicará e implementará procedimientos por escrito para garantizar el acceso significativo a todos los programas y las actividades del GDA por parte de todas las personas, incluidas las personas con conocimientos limitados del idioma inglés y aquellas con discapacidades.
- b. El GDA realizará los análisis adecuados descritos en la guía sobre conocimientos

limitados del idioma inglés de la EPA, que se encuentra en el Título 69 FR 35602 (25 de junio de 2004) y en <http://www.lep.gov>, a fin de determinar los servicios de idioma que quizás deba proporcionar para garantizar que las personas con estas características puedan participar de forma significativa en el proceso. El GDA debe desarrollar un plan de acceso al idioma coherente con los detalles del módulo de capacitación de la EPA para las personas con conocimientos limitados del idioma inglés. <http://www.epa.gov/civihights/lepaccess.htm>

- c. En el transcurso de los 120 días de la fecha de vigencia de este Acuerdo, el GDA enviará a la EPA una versión final de sus procedimientos por escrito para garantizar el acceso significativo a todos los programas y las actividades del GDA por parte de todas las personas, incluidas las personas con conocimientos limitados del idioma inglés. La EPA revisará los procedimientos de dicha versión y aportará cualquier comentario antes de que transcurran 60 días de su recepción.

2. Acceso para las personas con discapacidades:

- a. El GDA proporcionará, sin costo alguno, los servicios y recursos auxiliares adecuados, que incluyen, por ejemplo, intérpretes calificados para las personas sordas o con problemas auditivos, o para otras personas, según sea necesario para garantizar una comunicación eficaz o la igualdad de oportunidades de participar totalmente en los beneficios, las actividades, los programas y los servicios proporcionados por el GDA, de forma oportuna y de un modo que proteja la privacidad y la independencia de la persona específica.
- b. En el transcurso de los 120 días de la fecha de vigencia de este Acuerdo, el GDA enviará a la EPA una versión final de sus procedimientos por escrito para garantizar el acceso significativo a todos los programas y las actividades del GDA por parte de las personas con discapacidades. La EPA revisará los procedimientos de dicha versión y aportará cualquier comentario antes de que transcurran 60 días de su recepción.

3. Aviso de no discriminación en virtud de los estatutos de no discriminación federales²

- a. El GDA publicará un aviso de no discriminación en el sitio web del GDA y en las publicaciones generales que se distribuyen al público. A fin de garantizar la comunicación eficaz con el público, el GDA se asegurará de que el aviso de no discriminación sea accesible para las personas con conocimientos limitados del idioma inglés y para aquellas con discapacidades.
- b. El aviso incluirá, como mínimo, las siguientes declaraciones:
 - i. El GDA no discrimina sobre la base de la raza, el color, el origen nacional, la presencia de una discapacidad, la edad o el sexo para la administración de sus programas o actividades, según lo requerido por las leyes y reglamentaciones vigentes.
 - ii. El GDA es responsable de coordinar las tareas de cumplimiento y de recibir

² Título VI, Sección 504, de la Ley de Rehabilitación de 1973; Ley de Discriminación por Edad de 1975; Sección 13 de la Ley Federal de Control de Contaminación del Agua de 1972; y Título IX de las Enmiendas de Educación de 1972 (a los que, en lo sucesivo, se hace referencia de forma conjunta como “estatutos de no discriminación federales”).

las dudas relacionadas con los requisitos de no discriminación del Título 40 del C. F. R., Parte 7 (No discriminación en programas o actividades que reciben asistencia financiera federal de la Agencia de Protección Ambiental), incluidos el Título VI de la Ley de Derechos Civiles de 1964, en su texto enmendado; la Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975; el Título IX de las Enmiendas de Educación de 1972; y la Sección 13 de las Enmiendas de la Ley Federal de Control de Contaminación del Agua de 1972.

- iii. Si tiene alguna duda sobre este aviso o sobre cualquiera de los programas, las políticas o los procedimientos de no discriminación del GDA, puede comunicarse a esta dirección:

[El GDA INTRODUCIRÁ EL NOMBRE]
Departamento de Agricultura de Georgia
19 Martin Luther King Jr. Drive,
S.W. Atlanta, Georgia 30334-4201
Dirección de correo electrónico: [introducir]

- iv. Si cree que lo han discriminado con respecto a un programa o una actividad del GDA, puede comunicarse con el coordinador de no discriminación identificado arriba, visitar nuestro sitio web en titlevi@agr.georgia.gov o llamar al 404-586-1152 para saber cómo y dónde presentar una queja por discriminación.
- c. En el transcurso de los 30 días de la fecha de vigencia de este Acuerdo, el GDA publicará el aviso de no discriminación en su sitio web como se ha especificado arriba. El GDA comenzará a incluir el aviso de no discriminación en las publicaciones generales que se distribuyen al público en el transcurso de los 180 días de la fecha de vigencia de este Acuerdo.

4. Procedimientos de resolución de conflictos para las quejas presentadas en virtud de los estatutos de no discriminación federales

- a. El GDA se asegurará de publicar de forma extensa y notoria los procedimientos de resolución de conflictos para procesar las quejas por discriminación presentadas en virtud de los estatutos de no discriminación federales, y los revisará anualmente para garantizar que estén actualizados, que se incluyan en las publicaciones de forma permanente y que sean notorios en línea, a fin de permitir el manejo adecuado y sin demora de dichas quejas por discriminación.
- b. Los procedimientos de resolución de conflictos se centrarán, como mínimo, en lo siguiente:
 - i. identificar claramente al coordinador de no discriminación, incluida la información de contacto;
 - ii. explicar la función del coordinador de no discriminación en cuanto a la coordinación y la supervisión de los procedimientos de resolución de conflictos;
 - iii. indicar las personas que pueden presentar una queja según los procedimientos;
 - iv. describir el proceso de resolución de conflictos;

- v. explicar que se realizará una investigación adecuada, imparcial y sin demora de toda alegación presentada en virtud de los estatutos de no discriminación federales;
 - vi. indicar que, durante el análisis de la queja, se aplicará la preponderancia de los estándares de evidencia;
 - vii. incluir garantías de que se prohíben las sanciones y de que, en el caso de que las hubiera, las quejas por sanciones se tratarán sin demora;
 - viii. indicar que se brindará de inmediato un aviso por escrito con el resultado de la investigación, que incluya si se ha hallado discriminación y la descripción del proceso de investigación.
- c. En el transcurso de los 120 días de la fecha de vigencia de este Acuerdo, el GDA enviará a la ECRCO una versión final de los procedimientos de resolución de conflictos para la revisión. La ECRCO revisará los procedimientos de dicha versión y aportará cualquier comentario antes de que transcurran 60 días de su recepción.

5. Designación de un coordinador de no discriminación

- a. El GDA se asegurará de designar al menos un coordinador de no discriminación para garantizar el cumplimiento de los estatutos de no discriminación federales por parte del departamento.
- b. El GDA se asegurará de que el aviso y el procedimiento de resolución de conflictos que ha publicado de forma generalizada contenga el título, la dirección de correo electrónico, el número de teléfono y otra información de contacto del coordinador de no discriminación. El GDA explicará las responsabilidades del coordinador de no discriminación en los procedimientos de resolución de conflictos adoptados según lo dispuesto en la Sección III, Párrafo c., iii de este Acuerdo.
- c. El GDA se asegurará de que las responsabilidades del coordinador de no discriminación incluyan lo siguiente:
 - i. Proporcionar información a las personas de forma interna y externa acerca de sus derechos de obtener servicios, recursos, beneficios y la participación en cualquier programa o actividad del GDA sin tener en cuenta la raza, el origen nacional, el color, el sexo, la presencia de una discapacidad, la edad o la oposición previa a la discriminación.
 - ii. Proporcionar un aviso del proceso de resolución de conflictos del GDA y de la posibilidad de presentar una queja por discriminación ante el GDA.
 - iii. Mantener políticas y procedimientos o mecanismos de resolución de conflictos (p. ej., un manual de investigación) para garantizar que todas las quejas por discriminación presentadas ante el GDA en virtud de los estatutos de no

discriminación federales se procesen de forma adecuada y sin demora, y que todas las personas con conocimientos limitados del idioma inglés o discapacidades puedan tener un acceso significativo a las actividades y los programas del GDA.

- iv. Garantizar el seguimiento de todas las quejas por discriminación presentadas ante el GDA según los estatutos de no discriminación federales, incluido cualquier patrón o problema sistemático.
 - v. Llevar a cabo una revisión semianual de todas las quejas por discriminación presentadas ante el coordinador de no discriminación del GDA en virtud de los estatutos de no discriminación federales o de cualquier otra queja que el GDA investigue de forma independiente, a fin de identificar y abordar cualquier patrón o problema sistemático.
 - vi. Informar al personal del GDA acerca de las obligaciones del GDA de cumplir con los estatutos de no discriminación federales y de servir como recurso para tales cuestiones.
 - vii. Garantizar que se actualice a los reclamantes sobre el progreso de sus quejas por discriminación presentadas ante el GDA según los estatutos de no discriminación federales y que se los informe sin demora acerca de cualquier determinación tomada.
 - viii. Evaluar de forma periódica la eficacia de las tareas del GDA de ofrecer servicios, recursos, beneficios y la participación en cualquier programa o actividad del GDA sin tener en cuenta la raza, el origen nacional, el color, el sexo, la presencia de una discapacidad, la edad o la oposición previa a la discriminación.
 - ix. Garantizar que haya una capacitación adecuada en los procesos formales e informales para resolver las quejas presentadas en virtud de los estatutos de no discriminación federales.
 - x. Proporcionar o conseguir los servicios adecuados para garantizar que se capacite como corresponde a los empleados del GDA acerca de las políticas y los procedimientos de no discriminación del GDA, además de la naturaleza de las obligaciones de no discriminación federales.
- d. El coordinador de no discriminación no tendrá otras responsabilidades que creen un conflicto de intereses (*p. ej.*, desempeñarse de forma simultánea como asesor legal o representante en problemas de derechos civiles del GDA).
- e. En el transcurso de los 60 días de la fecha de vigencia de este Acuerdo, el GDA designará un coordinador de no discriminación y avisará de forma pública como corresponde, según lo especificado arriba.

- f. En el transcurso de los 30 días de haber elegido a un coordinador de no discriminación, el GDA enviará a la ECRCO una prueba de que ha designado a un coordinador de no discriminación y que este ha asumido las responsabilidades identificadas en la subsección 5(c) de arriba. Como prueba, la ECRCO recibirá del GDA una declaración firmada por el titular en la que este reconozca las responsabilidades del coordinador de no discriminación como se describe en la subsección S(e) de arriba, junto con una declaración firmada del GDA que determine (1) que ha designado al titular identificado como el coordinador de no discriminación y (2) que supervisará las responsabilidades del coordinador de no discriminación.

6. Participación del público

- a. La ECRCO reconoce que el GDA no administra actualmente un programa de permiso ambiental que implique la guía de participación del público de la ECRCO de la EPA, que se incluye en el Título 71 FR 14,207, 14,210 (21 de marzo de 2006). Sin embargo, en el caso de que el GDA administre un programa tal en el futuro, el GDA implementará un proceso de compromiso del público que esté disponible para todas las personas de forma independiente de la raza, el color, el origen nacional (incluidos las personas con conocimientos limitados del idioma inglés), la presencia de una discapacidad y el sexo, y desarrollará e implementará una política de participación del público que contenga lo siguiente:
 - i. una descripción general del plan de acción del destinatario para abordar las necesidades e inquietudes de la comunidad;
 - ii. una descripción del contexto histórico y demográfico de la comunidad que se incluirá en el proceso de participación del público;
 - iii. una lista de contacto de los funcionarios de la agencia, con números de teléfono y direcciones de correo electrónico, para permitir que el público se comunique por teléfono o por Internet;
 - iv. un plan de acción bien detallado (actividades de extensión) que el destinatario cumplirá para abordar las inquietudes;
 - v. un plan de contingencia para acontecimientos imprevistos;
 - vi. las ubicaciones donde puedan realizarse las reuniones públicas;
 - vii. los nombres de contacto para que las personas con conocimientos limitados del idioma inglés obtengan servicios de asistencia con el idioma, que incluyen la traducción de documentos o la ayuda de intérpretes en las reuniones;
 - viii. contactos adecuados de los medios locales (según las necesidades culturales y lingüísticas de la comunidad); y
 - ix. la ubicación del registro de información.

- b. Si el GDA comienza a administrar programas de permiso ambiental, en el transcurso de los 120 días posteriores debe enviar a la EPA una versión final de los procedimientos o procesos de participación del público para la revisión. La EPA revisará los procedimientos o procesos de dicha versión y aportará cualquier comentario antes de que transcurran 60 días de su recepción.

7. Capacitación

- a. En el transcurso de los 90 días de haber implementado las metas identificadas en este Acuerdo, lo que incluye el cumplimiento de los requisitos de un coordinador de no discriminación, un aviso de no discriminación, procedimientos de resolución de conflictos y procesos o procedimientos de participación del público, el GDA certificará que todo el personal adecuado haya recibido capacitación sobre estos procesos y procedimientos, y sobre la naturaleza de las obligaciones de no discriminación federales.
- b. En el transcurso de los 120 días de la ejecución de este Acuerdo, el GDA también tendrá un plan para garantizar que dicha capacitación sea una parte de rutina de una capacitación anual o una actualización para el personal adecuado.

IV. GENERAL

- 1. En consideración de la implementación por parte del GDA de los compromisos y las medidas descritas en la Sección III de este Acuerdo, la EPA finalizará su investigación de la queja n.º 02NO-16-R4 y no emitirá una decisión con los hallazgos del fundamento de la queja.
- 2. La EPA monitoreará que la implementación de los compromisos de este Acuerdo sea absoluta, y se asegurará de ello. Una vez que se cumplan los términos de este Acuerdo, la EPA emitirá una carta que documente la finalización de las medidas de monitoreo de la queja n.º 02NO-16-R4 y la finalización de la queja a partir de la fecha de esa carta.
- 3. A petición, la EPA proporcionará asistencia técnica al GDA acerca de cualquiera de las obligaciones relacionadas con los derechos civiles mencionadas anteriormente.
- 4. La EPA revisará y hará observaciones sobre cualquier documentación presentada por el GDA en la que se demuestre que cada compromiso se ha ejecutado por completo (*p. ej.*, la evidencia de la publicación de la designación del coordinador de no discriminación), y evaluará si la documentación es válida para el compromiso.
- 5. El GDA informará la ejecución completa de cada compromiso identificado en la Sección III, de forma coherente con los plazos de la Sección III, por correo certificado, a la siguiente dirección: Director, Oficina de Derechos Civiles de la EPA (código para correo 1201A), 1200 Pennsylvania Avenue N.W., Washington D. C. 20460, en el transcurso de los 30 días a partir de que el GDA haya ejecutado por completo cada compromiso.

V. CÁLCULO DEL TIEMPO Y AVISO

1. Según este Acuerdo, “día” significa un día calendario. Al calcular cualquier período en virtud de este Acuerdo, cuando el último día caiga sábado, domingo o feriado federal, el período se extenderá hasta el final del día laboral siguiente.
2. La entrega de cualquier documento requerido por este Acuerdo debe hacerse de forma personal; por correo certificado, con solicitud de acuse de recibo; o por cualquier servicio de envío comercial fiable que ofrezca una verificación por escrito de la entrega.
3. Los documentos que el GDA envíe a la EPA deben tener el siguiente destinatario: Director, Oficina de Derechos Civiles de la EPA de EE. UU. (código para correo 1201A), 1200 Pennsylvania Avenue N.W., Washington D. C. 20460.
4. Los documentos que la EPA envíe al GDA deben tener el siguiente destinatario: Departamento de Agricultura de Georgia, División de Servicios Legales, 19 Martin Luther King, Jr. Drive, S.W., Atlanta, Georgia 30334.

VI. EFECTO DEL ACUERDO

1. El GDA entiende que, al firmar este Acuerdo, acepta brindar datos y otra información de forma oportuna, de acuerdo con los requisitos de notificación de este Acuerdo. Además, el GDA entiende que, durante el monitoreo de este Acuerdo, si es necesario, la EPA puede visitar el GDA, entrevistar al personal y solicitar datos o informes adicionales según sea necesario para que la EPA determine si el GDA ha cumplido con los términos de este Acuerdo y con la reglamentación de la EPA vinculada con la implementación de los requisitos de no discriminación federales correspondientes al Título 40 del C. F. R., Parte 7, que fueron el conflicto en este caso.
2. El GDA entiende que la EPA finalizará el monitoreo de este Acuerdo cuando determine que el GDA ha implementado por completo este Acuerdo y que el fracaso en el cumplimiento de cualquier término de este acuerdo puede dar lugar a que la EPA reabra la investigación.
3. Si cualquiera de las partes desea modificar cualquier sección de este Acuerdo debido a un cambio de condiciones que dificulta o imposibilita el desempeño, o debido a un cambio sustancial en el programa o las autoridades del GDA, o por otra causa válida, la parte que busca una modificación debe notificar sin demora a la otra parte por escrito, exponiendo los hechos y la circunstancia que justifican la modificación propuesta. Cualquier modificación de este Acuerdo tendrá vigencia solo después de la aceptación por escrito del comisionado del GDA y el director de la EPA.
4. Este Acuerdo constituye todo el Acuerdo entre el GDA y la EPA acerca de las cuestiones aquí tratadas, y no debe interpretarse que ninguna otra declaración, promesa o acuerdo de cualquier otra persona modifique ningún compromiso o

término de este Acuerdo, excepto si el GDA y la EPA lo aceptan específicamente, de acuerdo con lo dispuesto en la Sección VI, Párrafo c de arriba.

5. Este Acuerdo no afecta la responsabilidad continua del GDA de cumplir con el Título VI u otras leyes de no discriminación federales y con la reglamentación de la EPA correspondiente al Título 40 del C. F. R., Parte 7, incluida la § 7.85, ni afecta la investigación de la EPA de cualquier queja por el Título VI u otros derechos civiles federales; tampoco aborda ninguna otra cuestión no cubierta en este Acuerdo.
6. La fecha de vigencia de este Acuerdo es la fecha en la que ambas partes han firmado el Acuerdo. Este Acuerdo puede firmarse por duplicado. El comisionado en carácter de funcionario del GDA tiene autoridad para participar en este Acuerdo a los fines de ejecutar las actividades incluidas en estos párrafos. El director de la ECRCO tiene autoridad para participar en este Acuerdo.

En nombre del Departamento de Agricultura de Georgia:



Gary W. Black
Comisionado,
Departamento de Agricultura de Georgia

2/8/17

(Fecha)

En nombre de la Agencia de Protección Ambiental de EE. UU.:



Lilian S. Dorka
Directora,
Oficina de Cumplimiento de los Derechos Civiles Externos, Oficina del Abogado General
Agencia de Protección Ambiental de Estados Unidos

2-6-2017

(Fecha)



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460**

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

January 7, 2020

Return Receipt Requested

Certified Mail #: 7015 3010 0001 1267 1982

In Reply Refer to:

EPA Complaint No.: 02NO-16-R4

Solimar Mercado-Spencer
Senior Staff Attorney
Georgia Legal Services Program
Farmworker Rights Division
104 Marietta Street, Suite 250
Atlanta, GA 30303-2706

Dear Ms. Mercado-Spencer:

This letter is to notify you that the Georgia Department of Agriculture (GDA) has fully complied with the Informal Resolution Agreement (Agreement), dated February 8, 2017, between GDA and the U.S. Environmental Protection Agency (EPA) External Civil Rights Compliance Office (ECRCO) reached in response to Complaint No. 02NO-16-R4. Accordingly, Complaint No. 02NO-16-R4 is closed as of the date of this letter.

On July 6, 2016, ECRCO accepted the following issue for investigation;

Whether GDA's operation of its Worker Protection Standards Program promulgated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136w discriminated against limited English proficient (LEP) workers including Latino workers, on the basis of national origin, in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation.

On February 8, 2017, GDA entered into an Informal Resolution Agreement (IRA) with ECRCO to resolve the issue accepted for investigation as well as additional concerns identified by ECRCO regarding GDA's nondiscrimination program. Since the signing of the IRA, ECRCO provided significant technical assistance to GDA and worked collaboratively with GDA to support its development and implementation of the necessary policies, plans and procedures.

To address the primary issue accepted for investigation, the IRA required GDA to develop a Language Access Plan (LAP) to ensure meaningful access to all of GDA's programs, activities and services, including its Worker Protection Standards Program, for persons with limited English proficiency. GDA's current LAP includes an analysis of the language needs of the population of persons most likely to encounter GDA, methods for providing assistance, methods

for notifying individuals with limited English proficiency of the availability of this assistance, and information regarding future plan updates. Specific provisions of the plan include:

- The employment or maintenance of contracts with qualified translators for the translation of vital documents;
- The employment or maintenance of contracts with qualified interpreters for verbal communication in person and/or, via telephone;
- The inclusion of a toll-free direct response telephone number for Spanish-speaking callers; and
- The posting of a notice in Spanish in the GDA reception area and online detailing the availability of language assistance in Spanish.

The IRA also required GDA to develop and implement a nondiscrimination program that contains the required procedural safeguards as well as the policies and procedures to ensure that persons with disabilities have meaningful access to GDA programs, services and activities. These include, for example, “prominently” posted and accessible to the public (including to persons with limited English proficiency and persons with disabilities): a notice of nondiscrimination; a nondiscrimination coordinator; nondiscrimination grievance procedure; and a disability policy and process.

Based on a careful review of the most current documentation submitted by GDA and the information publicly available on GDA’s website, ECRCO has determined that GDA has complied with the terms of the IRA entered into on February 8, 2017. Accordingly, ECRCO is terminating the monitoring of the IRA and closing EPA Complaint No. 02NO-16-R4 as of the date of this letter.

Neither the conclusion of ECRCO’s monitoring of this IRA or the closing of this complaint affect GDA’s continuing responsibility to comply with Title VI or the other federal non-discrimination laws and EPA’s regulation at 40 C.F.R. Parts 5 and 7, nor does it affect EPA’s investigation of any other Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.

If you have any questions, please feel free to contact me at 202-564-9649, by e-mail at dorka.lilian@epa.gov, or Dale Rhines, ECRCO’s Deputy Director at 202-564-4174, by email at rhines.dale@epa.gov or U.S. mail at U.S. EPA, Office of General Counsel (Mail Code 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460.

Sincerely,



Lilian S. Dorka
Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights and Finance Law Office
U.S. EPA Office of General Counsel

Beverly Banister
Acting Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA, Region 4

Leif Palmer
Regional Counsel
U.S. EPA, Region 4



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460**

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

January 7, 2020

Return Receipt Requested

Certified Mail #: 7015 3010 0001 1267 2132

In Reply Refer to:

EPA Complaint No.: 02NO-16-R4

Gary Ward Black, Sr.
Commissioner
Georgia Department of Agriculture
19 Martin Luther King Jr. Drive SW, Room 410
Atlanta, GA 30334

Dear Commissioner Black:

This letter is to notify you that the Georgia Department of Agriculture (GDA) has fully complied with the Informal Resolution Agreement (Agreement), dated February 8, 2017, between GDA and the U.S. Environmental Protection Agency (EPA) External Civil Rights Compliance Office (ECRCO) reached in response to Complaint No. 02NO-16-R4. Accordingly, Complaint No. 02NO-16-R4 is closed as of the date of this letter.

On July 6, 2016, ECRCO accepted the following issue for investigation;

Whether GDA's operation of its Worker Protection Standards Program promulgated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136w discriminated against limited English proficient (LEP) workers including Latino workers, on the basis of national origin, in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation.

On February 8, 2017, GDA entered into an Informal Resolution Agreement (IRA) with ECRCO to resolve the issue accepted for investigation as well as additional concerns identified by ECRCO regarding GDA's nondiscrimination program. Since the signing of the IRA, ECRCO provided significant technical assistance to GDA and worked collaboratively with GDA to support its development and implementation of the necessary policies, plans and procedures.

To address the primary issue accepted for investigation, the IRA required GDA to develop a Language Access Plan (LAP) to ensure meaningful access to all of GDA's programs, activities and services, including its Worker Protection Standards Program, for persons with limited English proficiency. GDA's current LAP includes an analysis of the language needs of the

population of persons most likely to encounter GDA, methods for providing assistance, methods for notifying individuals with limited English proficiency of the availability of this assistance, and information regarding future plan updates. Specific provisions of the plan include:

- The employment or maintenance of contracts with qualified translators for the translation of vital documents;
- The employment or maintenance of contracts with qualified interpreters for verbal communication in person and/or, via telephone;
- The inclusion of a toll-free direct response telephone number for Spanish-speaking callers; and
- The posting of a notice in Spanish in the GDA reception area and online detailing the availability of language assistance in Spanish.

The IRA also required GDA to develop and implement a nondiscrimination program that contains the required procedural safeguards as well as the policies and procedures to ensure that persons with disabilities have meaningful access to GDA programs, services and activities. These include, for example, “prominently” posted and accessible to the public (including to persons with limited English proficiency and persons with disabilities): a notice of nondiscrimination; a nondiscrimination coordinator; nondiscrimination grievance procedures; and a disability policy and process.

Based on a careful review of the most current documentation submitted by GDA and the information publicly available on GDA’s website, ECRCO has determined that GDA has complied with the terms of the IRA entered into on February 8, 2017. Accordingly, ECRCO is terminating the monitoring of the IRA and closing EPA Complaint No. 02NO-16-R4 as of the date of this letter.

Neither the conclusion of ECRCO’s monitoring of this IRA or the closing of this complaint affect GDA’s continuing responsibility to comply with Title VI or the other federal non-discrimination laws and EPA’s regulation at 40 C.F.R. Parts 5 and 7, nor does it affect EPA’s investigation of any other Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.

If you have any questions, please feel free to contact me at 202-564-9649, by e-mail at dorka.lilian@epa.gov, or Dale Rhines, ECRCO’s Deputy Director at 202-564-4174, by email at rhines.dale@epa.gov or U.S. mail at U.S. EPA, Office of General Counsel (Mail Code 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460.

Sincerely,



Lilian S. Dorka
Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Angelia Talbert-Duarte
 Acting Associate General Counsel
 Civil Rights and Finance Law Office
 U.S. EPA Office of General Counsel

 Beverly Banister
 Acting Deputy Regional Administrator
 Deputy Civil Rights Official
 U.S. EPA, Region 4

 Leif Palmer
 Regional Counsel
 U.S. EPA, Region 4

**UNITED STATES OF AMERICA
NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR
OFFICE OF CIVIL RIGHTS**

**UNITED STATES OF AMERICA
ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF CIVIL RIGHTS**

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
DEPARTMENTAL OFFICE OF CIVIL RIGHTS**

**FEDERAL HIGHWAY ADMINISTRATION
OFFICE OF CIVIL RIGHTS**

**THE DESCENDANTS OF THE BOYD CARTER MEMORIAL CEMETERY, and
RURAL AGRICULTURAL DEFENDERS**
Complainants,

vs.

Docket No.

**WEST VIRGINIA STATE HISTORIC PRESERVATION OFFICE; WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION; WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS; DEPARTMENT
OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, WEST
VIRGINIA DIVISION; JEFFERSON COUNTY COMMISSION and ITS
COMPONENTS: JEFFERSON COUNTY HISTORIC LANDMARKS COMMISSION,
JEFFERSON COUNTY OFFICE OF ENGINEERING, and THE OFFICE OF THE
COUNTY CLERK OF JEFFERSON COUNTY**
Respondents.

COMPLAINT PURSUANT TO TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

I. COMPLAINANTS

The Complainants are the African American Boyd Carter Memorial Cemetery (hereinafter called “the Cemetery”), and its descendants; and Rural Agricultural Defenders (RAD). (b) (6) Privacy, (b) (7)(C) Enforcement Privacy are African American descendants of many individuals buried in the Cemetery. Jennifer J. King, Giuliana Brogna, and Susan April are members of Rural Agricultural Defenders, friends of the Cemetery.

The Complainants bring forward this complaint pursuant to Title VI of the Civil Rights Act of 1964 on behalf of the 85 dearly departed occupants of the Cemetery ([Exhibit A](#)) and at least 88 additional deceased individuals whose internment site is located in Kearneysville, WV, but the exact locations are unknown. The majority of these deceased individuals were African American. Not all death records are available (only records prior to 1968 are public) but the remaining individuals are most likely African American due to the familial relationships to other decedents buried in the Cemetery.

This vulnerable, voiceless minority population was adversely affected by the neutral, but more often indifferent, application of policies and procedures by West Virginia State Agencies and Departments beginning in early 2017 and continuing to the present day. The Complainants assert that the African American occupants of the Cemetery have been regularly discriminated against as a consequence of supposedly routine governmental business. The Complainants assert that no substantial legitimate justification for these disparate impacts can be made; time and time again the interests of the well-funded and well-connected few were prioritized above the dignity of the human beings interned in the Cemetery. Furthermore, the Complainants believe that effective alternative practices exist that can lessen the potential for unintended discrimination and this complaint will give the Respondents the opportunity to address diffeincies their policies and procedures that can lead to discrimination, even unintentially, in violation of Title VI of the Civil Rights Act of 1964.

The dead cannot speak for themselves, the living must speak for them.

II. RESPONDENTS

The Respondents are West Virginia State Historic Preservation Office (WVSHPO); West Virginia Department of Environmental Protection (WVDEP); West Virginia Department of Transportation (WVDOT), Division of Highways ; Department of Transportation, Federal Highways Administration, West Virginia Division; Jefferson County Commission (JCC) and its components: Jefferson County Historic Landmark Commission (JCHLC); Jefferson County Office of Engineering, and The Office of the County Clerk of Jefferson County.

The Respondents' actions and inactions in regards to the Cemetery, both directly and indirectly, in the course of government business have severely and adversely impacted the Cemetery. The Complainants do not see intentional discrimination at work, but rather a negative, disparate impact that may be unintended, but nethertheless has discriminating affects on the Cemetery occupants and their descendents.

Regardless if the Respondents explicitly prohibit discrimination in violation of Title VI, the established procedures and policies, and implementation of those policies have allowed various construction activities to proceed unchecked, causing irreparable harm to the Cemetery, its descendants, and African American culture, heritage, and history in Jefferson County WV. This harm is obvious in that the archaeological settings and significance of these burial grounds have been directly affected. The Respondents, who all receive federal funding as demonstrated in the sections below, are required to make every effort to abide by all laws of the Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] and must have the awareness, skills, and training to respect and protect all aspects of a culture's heritage, history, and traditions.

It is unclear to the Complainants whether the harms described herein are the results of collusion on a county, state and national scale or a complete breakdown of Jefferson County and West Virginia State government functioning. The reason why matters little; the Cemetery and it's occupants were left to the mercy of corporations that do not feel obligated to respect the Cemetery and clearly intend to continue construction regardless of the consequences to others.

III. SUMMARY OF TITLE VI COMPLAINTS BY AGENCY

Under Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Complainants submit this affirmative statement within 180 days of the following harms:

- The Section 106 procedure managed by West Virginia State Historic Preservation Office (WVSHPO) was not compliant with Federal Regulations 36 CFR § 800 and 54 U.S. Code § 306101-306131, resulting in an incomplete Section 106 process, and flawed permits that referenced it. Further, West Virginia State Historic Preservation Office (WVSHPO) failed to respond and act upon communications and pleas sent from descendants, historians, and supporters regarding the historic significance of the Cemetery and the need to preserve and protect the Cemetery against construction activities on its borders. The last action by WVSHPO in regards to the cemetery was May 3, 2019.
- Approval of the NPDES/State Stormwater Construction Permit (Permit #WVR311281) for Mountaineer Gas' gas pipeline issued on March 29, 2019 by the West Virginia Department of Environmental Protection (WVDEP).
- Failure of the Jefferson County Historic Landmarks Commission (JCHLC) to comply with WVSHPO procedures and procedures set forth under JCHLC's bylaws which govern recognition and protection of historic areas. Last JCHLC action regarding the Cemetery was June 18, 2019.
- Failure for Jefferson County Office of Engineering to review Mountaineer Gas' gas pipeline route and project. (NPDES/State Stormwater Construction Permit (Permit #WVR311281) issued on March 29, 2019 by the West Virginia Department of Environmental Protection (WVDEP))
- Failure for Jefferson County Clerk to accurately keep land records. Incorrect land records were involved in Mountaineer Gas' gas pipeline route and project. (NPDES/State Stormwater Construction Permit (Permit #WVR311281) issued on March 29, 2019 by the West Virginia Department of Environmental Protection (WVDEP))

IV. THE CEMETERY BACKGROUND

A. About Boyd Carter Memorial Cemetery

The Cemetery is located on Granny Smith Lane in Kearneysville, WV and lies within the Middleway District of Jefferson County. It is a predominantly African American burial ground. The community where the Cemetery is located has been historically called Harts Town. Harts Town was a known African American community and has been well documented in WV State Historic Preservation Office's (WVSHPO) historical surveys, however, it has not been granted a designation of historical significance, protection, or preservation to any to the African American structures, objects and sites in the area.

The Cemetery has been referred to as the Boyd Carter Cemetery, Stewart Chapel Methodist Cemetery, African Methodist Episcopal (A.M.E.) Cemetery, Methodist Cemetery of Kearneysville, and Jefferson Orchards Cemetery. Sometimes the Cemetery is referred to as two separate cemeteries, however, it is one tract of land.

The Cemetery has at least 85 known burials. [\(Exhibit A\)](#) The first known burial in the Cemetery was in 1904 and the most recent burial was in 1999. A December 1902 deed (Deed Book 98, Page 68) called the Cemetery a "burying ground for colored people". [\(Exhibit B\)](#) There are some graves with only markers and no discernible text. There are several United States military war veterans buried there.¹ The Cemetery is a public cemetery and as mentioned within its deed has its own ingress and egress rights to Granny Smith Lane.

A neighboring property deed indicates there could be burials along property boundaries: "this conveyance is made subject to such rights of burial as may exist - it being understood that there may be certain bodies buried in the portion of the land herein described near to and along the northeast line of the old cemetery and the northwest line of the old cemetery." [\(Exhibit C\)](#). A

¹ (b) (6) Privacy, (b) (7)(C) Enforcement Privacy



recent survey performed indeed show many burials outside of the Cemetery boundaries. ([Exhibit D](#)) Only one grave, (b) (6) Privacy, (b) (7)(C) Enforcement Privacy is listed for spatial reference on the recent survey map; however, many more identifiable burials lie beyond the Cemetery property boundaries.

1. Ground Penetrating Radar

Ground penetrating radar was performed on April 3, 2019, which indicates several potential unmarked graves inches from Granny Smith Lane.² ([Exhibit E and F](#)) Some graves have a depth of only 2.5 feet below ground surface.³

With the help of ground penetrating radar and research, grave plotting is underway ([Exhibit G](#)).⁴ More archaeological research is needed to detect burials. As indicated in the report many graves could be depreciated, not within caskets, and vegetation impairments make burials harder to detect with radar:

“We found that the soil allowed for maximum GPR depth penetration of 5’ in areas outside of heavy vegetation. Findings ranged from confirmed potential graves to potential voids. As stated in the limitations, due to the age of many of the graves and the unknown caskets that the deceased were buried in, many of these graves could be extremely depreciated over time. Therefore, minimal voids could indicate the presence of remnants and were marked out accordingly.”⁵

2. Unmarked Graves

From death certificate and grave research, there are at least 85 confirmed burials in the Boyd Carter Memorial Cemetery. ([Exhibit A](#)) Death certificate research indicates an additional

² Ground Penetrating Radar Report

https://drive.google.com/file/d/1rTSOcm2ore0pp0Rgt7UD6BIjkcTCud_e/view?usp=sharing

³ Ground Penetrating Radar Report - page 4

https://drive.google.com/file/d/1rTSOcm2ore0pp0Rgt7UD6BIjkcTCud_e/view?usp=sharing

⁴

https://www.google.com/maps/d/u/0/viewer?fbclid=IwAR1WJENG6cJT6a4B-dwJUtgStgd8EEfGRl-ywbaopukS8FrHE1na7w_z6tk&mid=1qnKO6az5pwhfeLjn3w6nIzzEEcQUZYU&ll=39.37681500000004%2C-77.88196900000003&z=19

⁵ Ground Penetrating Radar Report - page 2

https://drive.google.com/file/d/1rTSOcm2ore0pp0Rgt7UD6BIjkcTCud_e/view?usp=sharing

88 burials with Kearneysville, WV listed as the place for interment. These individuals do not appear in the cemetery inventories of the four cemeteries located in Kearneysville (Caucasian cemetery at the Kearneysville Presbyterian Church, African American cemetery located at St. Paul's Baptist Church, Hart-Lucas African American cemetery located adjacent of St. Paul's Baptist Church's cemetery, and African American Boyd Carter Memorial Cemetery). A cross-reference check was also performed against other known African American and non-segregated cemeteries located in Jefferson and Berkeley Counties.

3. Boyd Carter Memorial Cemetery - Slave Burial Ground

Historical research shows the Cemetery and surrounding properties were owned by slave owners, (b) (6) Privacy, (b) (7)(C) Enforcement & his descendants, the Dandridge's. Jefferson Orchards' (adjacent to the Cemetery property) deed indicates Dandridge ownership. (Exhibit H) From 1763 - 1772, Stephen owned 1,100 acres and 318 acres was used for mostly wheat production and pasturage. In the center of this 318 acres, is where the Cemetery sits today. Historical research indicates the Cemetery and surrounding properties were a burying ground for a hundred years of Stephen's & Dandridge's enslaved. According to U.S. Censuses, through most of the first half of the 1800's, the Dandridge's owned the most enslaved persons ranging from forty to over eighty.

The 1852 S. Howell Brown Map of Jefferson County, WV shows Dandridge land ownership.⁶ (Exhibit I) While mapping technologies have greatly improved since 1852, many property boundaries have remained the same. The (b) (6) Privacy, (b) (7)(C) Enforcement property of today (formerly owned by (b) (6) Privacy, (b) (7)(C) Enforcement) has remained unchanged for over 150 years. We used this property as a point of reference to overlay the current Jefferson County Tax Map with the 1852 map showing Dandridge ownership and the Cemetery location. (Exhibit J) Also, the West Virginia GeoHistory / Geo-Explorer Project: Jefferson County Land Grants map⁷ show Stephen ownership of the Cemetery and surrounding property in 1763. (Exhibit K)

⁶ 1852 S. Howell Brown Map of Jefferson County, WV <https://www.loc.gov/item/2005625308/>

⁷ West Virginia GeoHistory / Geo-Explorer Project Jefferson County Land Grants <http://wvgeohistory.org/portals/0/ESRIJavascriptMaps/GHLandGrants/viewer/index.html>

More research is needed, however, it is possible that since some of the confirmed and unmarked burials have birth dates before 1863, these individuals could have been born into slavery.

Mother Nature and Father Time have taken a toll on the Cemetery. This is not anyone's fault and it is not abandoned as many living descendants still care for the Cemetery. Tree roots have become intertwined with graves. Most of the trees in the Cemetery have been there for years and research shows that slaves often buried their departed in remote areas and non-arable land among trees and underbrush and used trees as burial markers.^{8,9} ([EXHIBIT L and M](#)) . Slaves were forced to bury their loved ones where their masters deemed not worthy for other purposes. The Cemetery has a deep depression and a rock ridge located in the middle of the property which would make this land unworthy of agriculture.

Plantings of yucca, daffodils, and small bushes mark graves.^{10,11} ([EXHIBIT M, N, and O](#)) As is traditional of African American burials, individuals were laid to rest in an east-west orientation. Some of the burials are not only near family members but also arranged in kinship groups. Additionally, there are tokens and symbolic memorials left on gravesites. It is difficult at this time to determine how many of these remnants, memorials, and grave markers are underneath the soil and debris at the cemetery. A phase one cultural resource study could help in identifying resources and defining the site boundaries within the area of potential effect.

Often African American cemeteries' and burial grounds' traditions are misunderstood or disregarded and are labeled as abandoned. The University of Georgia states, "Consequently, these traditions, along with the South's segregated past, has lead [sic] to the negative perception

⁸ "Grave Matters: The Preservation of African-American Cemeteries" by the Chicora Foundation, page 4 <http://www.chicora.org/pdfs/Grave%20Matters%20-%20The%20Preservation%20of%20African%20American%20Cemeteries.pdf?fbclid=IwAR2RIXr7kH3S-fWPvic6vGEfnZsA1I6VMPU5PcxZiltkU3lRe6ja5f5a64c>

⁹ "African American Cemeteries and the Restoration Movement" University of Georgia <https://digilab.libs.uga.edu/cemetery/exhibits/show/brooklyn/african-american-cemeteries-an?fbclid=IwAR3eukiEHFI0w6q2F7488J0UbAhvXKTA328V...>

¹⁰ "Grave Matters: The Preservation of African-American Cemeteries" by the Chicora Foundation, page 5 <http://www.chicora.org/pdfs/Grave%20Matters%20-%20The%20Preservation%20of%20African%20American%20Cemeteries.pdf?fbclid=IwAR2RIXr7kH3S-fWPvic6vGEfnZsA1I6VMPU5PcxZiltkU3lRe6ja5f5a64c>

¹¹ "African American Cemeteries and the Restoration Movement" University of Georgia <https://digilab.libs.uga.edu/cemetery/exhibits/show/brooklyn/african-american-cemeteries-an?fbclid=IwAR3eukiEHFI0w6q2F7488J0UbAhvXKTA328V...>

of Black cemeteries as being abandoned and unkept.”¹² Please note the Anderson Cemetery mentioned in this reference document is not in West Virginia. The Anderson Cemetery is located in Henrico County, Glen Allen, Virginia.¹³

Many old cemeteries are in danger of being destroyed by encroaching economic development projects; however, it is more common that African American cemeteries are removed and erased from history and their communities.¹⁴ The removal of African American cemeteries and burial grounds has become such a problem that new legislation has been introduced to protect these cemeteries and burial grounds.¹⁵

The African American Burial Grounds Network Act, also known as HR 1179, was created by Rep. Alma S. Adams (D-NC) and Rep. A. Donald McEachin (D-VA) to preserve and protect African American cemeteries and burial grounds and African American history.^{16, 17}

Ignorance of a culture’s heritage and traditions is not an excuse for discriminatory actions (or inactions) by government entities. It is the duty of the Respondents to at least respect the variety of cultures and traditions that make the United States a uniquely diverse country. Every effort should be made by all the Respondents to prevent discrimination on the basis of gender, race, color, disability or national origin. The Respondents, being federally funded agencies,

¹² “African American Cemeteries and the Restoration Movement” University of Georgia <https://digilab.libs.uga.edu/cemetery/exhibits/show/brooklyn/african-american-cemeteries-an?fbclid=IwAR3eukiEHFI0w6q2F7488J0UbAhvXKTA328V...>

¹³ “Marker unveiled at historic Glen Allen cemetery”, by the Henrico Citizen, May 14, 2019 <https://www.henricocitizen.com/articles/marker-unveiled-at-historic-glen-allen-cemetery/>

¹⁴ “Gentrification is erasing black cemeteries and, with it, black history” by Christopher Petrella, The Guardian, April 29, 2019, https://www.theguardian.com/commentisfree/2019/apr/27/gentrification-is-erasing-black-cemeteries-and-with-it-black-history?CMP=share_btn_fb&fbclid=IwAR3MpQ3gVHK0h1BuGPhZ81qkcFD3nyu6OtzYqEcqjYCS2PDIGCOq618V-tk

¹⁵ “New Legislation Seeks To Protect Lost African-American Burial Grounds”, by David Anderson, Forbes, Feb 13, 2019, <https://www.forbes.com/sites/davidanderson/2019/02/13/new-legislation-seeks-to-protect-lost-african-american-burial-grounds/?fbclid=IwAR1ZFLlfhyBgFE57zELkKh8iGqTwxFFs7R8BwlMGaQvBs1lRpAWeEqhKAfw#362306685dd8>

¹⁶ “Lawmakers Introduce African-American Burial Grounds Network Act”, By George Kevin Jordan, The Afro, March 9, 2019, <https://www.afro.com/lawmakers-introduce-african-american-burial-grounds-network-act/?fbclid=IwAR3kAbSfnJZRjFyJQVeF4YjqMlme7PORb8AEfy20...>

¹⁷ The African American Burial Grounds Network Act, HR 1179, https://mceachin.house.gov/sites/mceachin.house.gov/files/documents/2019-02-11%20Adams_McEachin%20African%20American%20Burial%20Ground%20Network%20Act_0.pdf

should have the awareness, knowledge, and training to not only recognize African American historical sites but handle them respectfully and appropriately.

4. African Methodist Episcopal Church of Kearneysville Affiliation

The African Methodist Episcopal (A.M.E.) Church has been abandoned since the 1970s but was affiliated with the Cemetery for decades. The deed for the A.M.E. Church shows it was established in 1889. [\(Exhibit P\)](#) The A.M.E. Church has also been called the Stewart Chapel African Methodist Episcopal (A.M.E.) Church. It is located less than 800 feet from the Cemetery. [\(Exhibit Q\)](#)

WVSHPO previously reviewed the A.M.E. Church for the National Historic Register eligibility back in 1996 [\(Exhibit R\)](#) as well as the related A.M.E. Meeting House. [\(Exhibit S\)](#) Both of these structures were decommissioned from Hartstown community use in the 1970's. While the WVSHPO surveys described dilapidated structures, they made no reference to the Church grounds as well as making no recommendations for further archaeological surveys or research. A church, being sacred ground, usually has burials on its property. It was remiss of the surveyor and WVSHPO not to recommend further archaeological research and assessment.

As mentioned previously, 88 death certificates indicate Kearneyville as the interment location. The Complainants believe many of these individuals to be interred at the A.M.E. Church as well as the Boyd Carter Memorial Cemetery. Oral interviews were conducted with (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Cemetery descendants and life-long residents of Kearneysville, and they have recollections of graves and burial ceremonies at the A.M.E. Church decades ago.

It is possible temporary funeral home markers were used at the time of interment instead of more permanent markers or headstones and time, weather, etc. has displaced those markers. Lack of burial plot documentation for the Cemetery and lack of archaeological research on the Cemetery, A.M.E. Church, and Meeting House make burial locations difficult to determine. Many of the African American death certificates in question indicate burials in “M.E. Church of Kearneysville” which could indicate burials at the Cemetery or the A.M.E. Church. By cross checking with other Jefferson County and Berkeley County cemeteries, the Complainants believe

many of these individuals were were laid to rest at the Boyd Carter Memorial Cemetery and the A.M.E. Church.

It is highly likely there are more than 88 unmarked African American graves located in Boyd Carter Memorial Cemetery and A.M.E. Church as the latest burial in Boyd Carter was 1999. For privacy concerns regarding social security numbers, death certificate research can only be performed for deaths up until 1968.

The A.M.E. Church, Meeting House, and its property are currently without guardianship or trustees as the original trustees have been deceased for years and legal provisions have not been established for the property. Some of the original trustees for the A.M.E. Church were also the original trustees for the Cemetery. Further research is needed to identify possible future heirs and/or trustees. To the Complainants knowledge, no legal proceedings have occurred to condemn the property and it has not been taken by eminent domain. To this day, Jefferson County Assessor and Tax information indicates the property is still under a church exemption status.

[\(Exhibit T and U\)](#)

V. RECIPIENT: WEST VIRGINIA STATE HISTORIC PRESERVATION OFFICE

The West Virginia State Historic Preservation Office (WVSHPO) is a division of the West Virginia Department of Arts, Culture and History. WVSHPO states its mission is “to encourage, inform, support, and participate in the efforts of the people of West Virginia to identify, recognize, preserve and protect West Virginia's prehistoric and historic structures, objects and sites.” WVSHPO seems to fill two roles in the Section 106 process; as the SHPO consultant in a subordinate role to the “Agency Official” (as described in 36 CFR § 800.2(a)) leading the Section 106 process on behalf of a federal agency; SHPO also appears to act as the “Agency Official” leading the Section 106 process when a federal agency is not directly involved and historic preservation consultation is required for state level permits. Ms. Susan Pierce is the State Historic Preservation Officer and Director of WVSHPO.

A. Federal Funding

WV SHPO is the recipient of federal grants from the National Parks Service, a Bureau of the United States Department of the Interior. The CFDA program is 15.904 - Historic Preservation Fund Grants-In-Aid, which provides FORMULA grants and PROJECT grants.¹⁸ The Complainants allege that from March 7, 2017 through the present, WVSHPO's practices had a disparate impact on the Boyd Carter Cemetery and its descendants.

West Virginia Department of Arts, Culture and History / WVSHPO Federal Funding 2017 - 2019

Fed. Agency	Action Date	Award ID	Amount
DOI/NPS	07/14/2017	P17AF00018	\$443,207
DOI/NPS	09/05/2017	P17AF00018	\$276,583
DOI/NPS	04/10/2018	P18AF00021	\$357,143
DOI/NPS	06/07/2018	P18AF00021	\$375,816
DOI/NPS	07/02/2019	P19AF00115	\$742,836
DOI/NPS	08/21/2019	P19AP00147	\$24,841

B. Timeliness of Complaint

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving Federal financial assistance must be filed within 180 days after the alleged discriminatory act.

The Complainants argue that May 3, 2019 is the most recent interaction of consequence with WVSHPO regarding the Cemetery. James Surkamp, a Jefferson County resident and local

¹⁸FORMULA grants- Funding to States, Tribes, Territories, the Freely Associated States, the District of Columbia, Certified Local Governments, and other applicants as defined by Congress, to assist in the identification, evaluation, and protection of historic properties by such means as education, survey, planning, technical assistance, preservation, documentation, and financial incentives like grants and tax credits available for historic properties.

PROJECT grants- Funding to eligible grantees to provide for the identification, evaluation, and protection of historic properties as defined by Congress.

historian, sent WVSHPO an historical review of the area now known as Jefferson Orchards where the Rockwool Ranson facility is currently under construction. WVSHPO received his report on May 3, 2019. ([Exhibit V](#)) This report, which cited census reports, Jefferson County land maps, tax records and other publicly available documentation, laid out a robust argument for the historical significance of the site that includes the Cemetery. WVSHPO never responded to this communication, essentially refusing to initiate the “Post-Review Discovery” process as described in 36 CFR § 800.13. This negligent action is described below.

The 180 day limitations period ends October 30, 2019. This complaint was sent by FedEx Overnight Priority to Director, Office of Civil Rights, Department of the Interior, 1849 C Street, NW, Washington, DC, 20240 on September 23, 2019.

C. Background

WVSHPO has known of the existence of the Cemetery for many years. Unfortunately, due to inaccuracies included on the 2005 WV Cemetery Survey Form for the Cemetery, much of the information in WVSHPO’s possession about the Cemetery is incorrect. For example, under “Burial Population”, graves were noted to be “Euro & African American”. ([Exhibit W](#)). Even more egregious, the survey notes only 53 known burials; there are 32 additional burials visible on the ground and in the historic record. The 2005 survey also incorrectly claims that “Some caskets appear to have been removed.”; however, this is an unsubstantiated statement as there is no evidence or known reason for burial removals at the time or prior to this survey.

The Complainants argue that WVSHPO was filling the role of “Agency Official” in the Section 106 process as no federal agency was involved. There were many points throughout the 15 months process that WVSHPO could have acted as a protective advocate not only for the Cemetery, but for at least three near-by properties listed on the National Register of Historic Places ((b) (6) Privacy, (b) (7)(C) Enforcement Farm, (b) (6) Privacy, (b) (7)(C) Enforcement Farm, and (b) (6) Privacy, (b) (7)(C) Enforcement). WVSHPO failed in its responsibility to properly manage the Section 106 process as an advocate for historic places, causing the Cemetery, among other properties, to suffer a disparate impact from the construction activities at the Rockwool site.

The majority of research used in this complaint was obtained by a Freedom of Information Action request to WVSHPO filed August 28, 2018 by Jefferson County Vision. Extracts of this large FOIA returned are included as exhibits. Mr. James Surkamp provided historic research resources.

D. Discriminatory Acts

a. WVSHPO incorrectly assumes the Cemetery is not in the direct footprint of Rockwool construction activities. This action violates 36 CFR § 800.4(a)(1) which specifies that the Area of Potential Effect must be determined and 36 CFR § 800.4(b)(1) which requires the agency official to “make a reasonable and good faith effort to carry out appropriate identification efforts”.

The Complainants argue that WVSHPO neglected to follow federal regulations governing the Section 106 process initiated by ERM, Inc. on behalf of the Jefferson Orchard Project (Project FR# 17-437-JF, AKA “Project Shuttle”, “Granny Smith Lane, Kearneysville”, “Rockwool”, “Roxul”) on March 7, 2017 ([Exhibit X](#)). In a reply letter ([Exhibit Y](#)) sent April 3, 2017, Susan Pierce, Deputy State Historic Preservation Officer, noted the Cemetery’s presence immediately adjacent to the project site (Cemetery WV SHPO ID #46JF507). She notes that the Cemetery had not yet been evaluated for inclusion on the National Register of Historic Places (NRHP), but critically and incorrectly assumes that the Cemetery is not in the direct footprint of the project area, and will therefore only need to be evaluated for viewshed effects (“Indirect effects” per Section 106) if deemed eligible for the NRHP. Ms. Pierce erred earlier in this same letter by suggesting, without evidence or consultation with ERM, Inc. that a viewshed evaluation anticipating a 2-3 story building would be adequate.

Ms. Pierce was not aware of and made no attempt to be aware of a number of marked and unmarked graves that lay outside the Cemetery property line. Surveys and assessments over the next year and a half also failed to note that these graves are situated on Rockwool’s property and therefore directly in the footprint of the project area ([Exhibit D and E](#)). This wrong assumption remained a “fact” for WVSHPO even after they had signed off on the project (Approval letter is

estimated to have been delivered around June 25-July 4, 2018, Complainants do not have an email or letter evidence).

In an email dated August 21, 2018, ([Exhibit Z](#)), Carolyn Kender, an archaeologist employed by WVSHPO, claimed “It is our understanding that the Jefferson Orchard Cemetery [the Cemetery] will not be impacted by the project’s construction activities”. WVSHPO relied on assessments done by consultants to deem the Cemetery ineligible for inclusion on NRHP, and as it never acknowledged that some graves were outside of the property line, how could WVSHPO have possibly determined that the Cemetery would be unaffected by construction?

It is the Complainants understanding that WVSHPO guidelines do not consider cemeteries as eligible for NRHP unless someone of historical significance is buried there. How could WVSHPO and their consultants have made this assumption with an incomplete 2005 burial inventory which never was given a second look or assessment? Again, there are 32 more easily identifiable confirmed burials than the 53 that was listed on the 2005 burial inventory.

Rockwool¹⁹ stormwater construction plans approved by the WVDEP reveal their intention to construct an emergency access road next to the Cemetery; on the road currently named Granny Smith Lane. ([Exhibit AA](#)) An easement agreement made between Rockwool and Jefferson Orchards, Inc. filed in the Jefferson County Courthouse (deed book 1197 page 680) also reveal their intentions for said emergency access road. ([Exhibit BB](#))

Granny Smith Lane currently is a gravel, single-vehicle width road. The emergency access lane is required to be at least 12 feet wide, which implies that Granny Smith Lane will need to be widened, threatening the graves laying outside the Cemetery boundaries on Rockwool property. There are marked graves as well as unmarked graves detected by ground penetrating radar within this area. ([Exhibit E and F](#)) Some of these graves lay 6 inches from the road and are critically threatened.

It is unclear how the Cemetery would have been treated differently if WVSHPO correctly noted that graves lie outside the Cemetery boundaries on Rockwool property. It is also unclear how this portion of land containing these graves could have been sold to Rockwool. The Complainants argue that due to WVSHPO’s negligent assumption that the Cemetery was not

¹⁹ Roxul dba Rockwool is tracked through the entire WVDEP permitting system as the entity Roxul.

included in the direct footprint of construction activity, and the fact that WVSHPO, various consultants and Rockwool, made no attempt to correct this wrong assumption; the occupants of the Cemetery and the Descendants have been disparately impacted by the disturbance to the Cemetery's archaeological significance from the construction activities of Rockwool and the Mountaineer Gas Pipeline and threat of exhumation to make way for the emergency access lane.

b. WVSHPO incorrectly requested Section 106 public comment from Jefferson County Historic Landmarks Commission (JCHLC). The Rockwool project is located in Ranson, WV therefore the request for public comment should have been addressed to City Council of Ranson, WV. This violated 36 CFR § 800.3(e) requiring a plan to inform the public of the undertaking.

There appears to be confusion over what government entity has authority to make public comments for this project. The entirety of the Rockwool project is located in the jurisdiction of Ranson, not the Middleway District of Jefferson County as was put forth by ERM, Inc. when the Section 106 process was initiated and continued to be incorrectly located in Middleway in subsequent communications and reports. The request for Section 106 public comments should have been sent to Ranson City Council in addition to the JCHLC, which had jurisdiction over three nearby NRHP properties and the Cemetery.

In the JCHLC October 10, 2018 meeting minutes ([Exhibit CC](#)), “[REDACTED] suggested the HLC membership, as County Commission appointed agents, are able to request any documents necessary to make an informed decision relating to their decision-making processes.” “Mr. Burke responded to [REDACTED] and indicated the property [Rockwool] is within a municipal boundary [Ranson, WV] and, thus, not under the jurisdiction of the HLC.” The suggestion is made that “Once Rockwool chose Ranson instead of the county property, the county commission took no further part [in the process].”

It is fair to assume that Ranson is responsible for monitoring historic places within its jurisdiction. Under the Section 106 regulations, 36 CFR § 800.2(c)(3) - Participants in the Section 106 process: “Under other provisions of Federal law, the local government may be authorized to act as the agency official for purposes of section 106.” However, Ranson does not

have a committee or council dedicated to historic landmarks in its jurisdiction. In this case, the Section 106 request for public comment for the Rockwool project should have been addressed to the City Council of Ranson. Rockwool had been working intimately with the City of Ranson and knew well that their property was located in Ranson, why was this error not addressed by Rockwool or its contractors?

Since JCHLC denies responsibility for evaluating this particular property and provided no comment, and the municipality in which the property is located does not have an established entity to provide comments on historic places, and no effort was made by WVSHPO or ERM, Inc. to contact Ranson, **then it is logical to conclude that the Section 106 requirement for public comment was not met.**

Regardless of the jurisdiction confusion regarding the Rockwool property, which is indeed located in Ranson, WV, the Cemetery is located in the Middleway District of Jefferson County, and falls within the purview of the JCHLC. The JCHLC therefore neglected their responsibility to evaluate the Cemetery when they incorrectly assumed that none of the aspects of this project were within their authority to evaluate.

The fact that the public was not informed, not even through a governmental body charged with handling historic properties within their jurisdiction, certainly violates 36 CFR § 800.3(e) requiring a plan to inform the public of the Section 106 undertaking. Although SHPO did make a plan, the plan was faulty from inception and destined to never be seen by the public.

c . WVSHPO did not receive public comment for the Section 106 process in violation of 36 CFR § 800.2(d)(2)(2). Further, it is unclear if Jefferson County Historic Landmark Commission (JCHLC) received the letter requesting public comment.

Regardless that the City of Ranson should have been contacted to provide public comment for the area within their jurisdiction, there was no reply or public comment from the agency that was solicited for comment, JCHLC. This violates 36 CFR § 800.2(d)(2)(2) which requires that the public be informed about an undertaking and its effects on historic properties. “The agency official must, except where appropriate to protect confidentiality concerns of

affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input.”

In WVSHPO’s April 3, 2017 reply letter ([Exhibit Y](#)) to ERM, Inc. which initiates the Section 106 Process, special mention is made that Federal regulations require public comment. WVSHPO also requires that ERM, Inc. specifically contact the Jefferson County Historic Landmark Commission (JCHLC) and request comment on the project. In this letter, the Cemetery (WVSHPO ID# 46JF507) is specifically mentioned as a potential historic place that requires evaluation for inclusion on NRHP.

A July 24, 2017 reply letter ([Exhibit DD](#)) to WVSHPO from Paige Gardner of The Thrasher Group, Inc. (A sub-consultant hired to perform the Phase 1 Archaeological Survey), supplies a copy of the letter sent on June 5, 2017 ([Exhibit EE](#)) to JCHLC requesting public comment. There are three NRHP properties that are listed on this letter, but the Cemetery is NOT listed nor is its ID number given. It is impossible to know if the Cemetery was purposely excluded from this letter, however, its exclusion certainly would have made evaluation of the Cemetery by the JCHLC unlikely.

Ms. Gardner reports that she received no comments or communications in response from JCHLC within 30 days. It appears that no other attempts were made to contact the JCHLC regarding this project. In the digital era we live in, it must be asked why contact via e-mail or telephone was not attempted. Both an email address (landmarkscommission@jeffersoncountywv.org) and a telephone number (304-728-3195) are listed on the JCHLC website. Why didn’t Ms. Gardner try to make contact through another method?

Regardless of the reason, the result was that no public comments were received from JCHLC. It appears that WVSHPO accepts this singular contact attempt as satisfying the requirement for public comment as they made no response to the July 24th letter. It appears that no other attempts were made to alert the public at large to the Section 106 review underway. Had any attempt been made to alert the public through usual means, i.e. Legal Notice in the local paper of record (The Spirit of Jefferson), it is likely that members of the community and descendants would have responded.

Furthermore, there is no proof provided that the June 5th letter was in fact received by JCHLC. There is no delivery confirmation receipt or evidence of a postmarked envelope included with the July 24th letter. A review of JCHLC's meeting minutes from the past several years reveals that projects under Section 106 review are discussed and evaluated during the JCHLC's bimonthly meetings. There is no mention in the July 12, 2017 meeting minutes of the June 5th letter or the Section 106 process for Project FR# 17-437-JF, AKA "Project Shuttle" ([Exhibit FF](#)). The first time the Rockwool/Roxul project is discussed by JCHLC occurs on December, 18 2017 in which JCHLC member Ben Horter reports that "They are already moving dirt. Their 106 was approved". ([Exhibit GG](#)) To be clear, the Section 106 process was not closed until 7 months later in late June 2018.

The Cemetery was disparately impacted by the lack of public comment in that the local community, and even those historically-minded individuals on the JCHLC, were unaware of the imminent threat of development until construction had already begun. Had the public been alerted in advance, descendants and concerned citizens would have had the opportunity to voice opposition to the project and possibly been able to uncover the historic importance of the land parcel and Cemetery in particular.

d. Consultants failed to uncover the potentially important historical relevance of the Cemetery as it relates to the land parcel owned by Rockwool. This effectively denied the Cemetery the possibility of inclusion on the National Historic Properties Register.

History is not hidden in Jefferson County. In fact, the prominence of Revolutionary and Civil War history in the county make it a tourism destination for thousands of visitors every year. As described in the Background section of this report, the Cemetery and the surrounding land tell an important story of the rich history of Jefferson County. Starting in Revolutionary times, through the pre-civil war slave-holding period, the Civil War itself, and into the 20th century, the land on which Rockwool is building, and the Cemetery that is adjacent to this property, have significant historical value.

While general reference to local Jefferson County history is made in the History/Architecture Survey dated June 14, 2017, written by Jacquelyn Lehmann of Weller and Associated and the Phase 1 Archaeology Literature Review and Reconnaissance Survey dated June 29, 2017, written by Ryan Weller of Weller and Associates, the consultants does not appear to have completed an in-depth investigation of the land plot in question. A very shallow view of history is made according to the Scope of Work encompasses only the recent past of the property including its time as an orchard.

The archaeological surveys were inadequate in their examination of the history of the Rockwool land parcel and the surrounding area. As described by James Surkamp in his historical review “Rockwool, the cemetery and historical considerations” received by SHPO on May 3, 2019, the Dandridge connection is not the only significant history to have occurred in this area. Most of the information Mr. Surkamp uses to flesh out the story of this history is publicly available, including historic land and tax maps held by the Jefferson County Clerk and census data from the 1800’s. These data were available to the consultants, but they did not make the effort to find and study them.

This shallow effort by the consultants hired by Rockwool to understand historic values of the former Dandridge land certainly adversely affected the Cemetery and its occupants. The June 14, 2017 Survey notes the Cemetery but fails to realize the easily accessible portion of the Cemetery is a part of a much larger, older and historically significant burial ground. As described in section “[IV. THE CEMETERY BACKGROUND](#)”, old African American burial grounds, and especially enslaved persons burial grounds, do not look like what one would expect in a modern cemetery. However, the trained professionals completing these surveys should have been aware of at least some of the telltale signs of an African American burial ground, including yucca and other living markers. If the consultants had actually spent time on the ground in the Cemetery, they should have realized that the 53 burials cited in the 2005 Cemetery survey was an underestimation of the true number of modern graves, and only a portion of the total number of people laid to rest in the burial grounds. This realization would have tipped off the consultants that the Cemetery is a more significant historic site than it appears.

If the purpose of these surveys, and indeed, of the Section 106 procedure as is to investigate and evaluate the potential effects on historic places, as well as discover and uncover historic places that may not be obvious to the untrained eye, then these surveys failed miserably. The Cemetery was adversely affected by these surveys, that failed to reveal the true historic nature of the Cemetery, incorrectly assuming that it was ineligible for inclusion on the NRHP.

e. WVSHPO did not begin a “Post-review discovery” process as described in 36 CFR § 800.13 when it received new information about the historical significance of the property on May 3, 2019 from James Surkamp.

On April 23, 2019, Mr. James Surkamp sent a deeply researched report on the history of the Rockwool land parcel to Susan Pierce at WVSHPO. At the time, the Mountaineer Gas pipeline was being built, and the Cemetery was at critical risk as pipeline construction, including tree-clearing, trench digging and other earth moving activities proceeded along the west and north property lines of the Cemetery. Please see section [“VI. RECIPIENT: WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION”](#) in this complaint for more information on the issues related to the pipeline. For the most part of April 2019, several descendants and community members contacted SHPO for help protecting the Cemetery, but Mr. Surkamp’s communication, with its valid conclusions and detailed research should have prompted SHPO to begin the “Post-review discovery” process as described in 36 CFR § 800.13.

As described in 36 CFR § 800.13 (b)(3) “(b) Discoveries without prior planning. If historic properties are discovered or unanticipated effects on historic properties found after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section, the agency official shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and:

- (3) If the agency official has approved the undertaking and construction has commenced, determine actions that the agency official can take to resolve adverse effects, and notify the SHPO/THPO, any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property, and the Council within 48 hours of the discovery. The notification shall describe the agency official's assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects. The SHPO/THPO, the Indian tribe or Native Hawaiian organization and the

Council shall respond within 48 hours of the notification. The agency official shall take into account their recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. The agency official shall provide the SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council a report of the actions when they are completed.”

A “post-review discovery” process would have allowed the Cemetery and the entire Rockwool land parcel an opportunity to be re-considered for NRHP eligibility based on new information. There is no way to know what “appropriate actions” to “resolve adverse effects” would have been recommended by WVSHPO. However, the simple fact that this process was not initiated caused an adverse disparate impact on the Cemetery, as it was denied yet again the chance to be recognized and registered as a historic place, thereby allowing the Cemetery to access and demand the protections granted for historic places by Federal law.

D. Authority

Complainants claim the WVSHPO has discriminated against the Cemetery under the following Public Civil Rights program guidelines in the United States Department of Interior, Office of Civil Rights, Civil Rights Directive 2011-01²⁰:

F. Civil Rights Restoration Act of 1987 (Pub. L. 100-259; 102 Stat. 28), as amended, by Civil Rights Restoration Act of 1991 (Pub. L. 102-166; 42 U.S.C. 2000d) to overturn the Supreme Court’s 1984 decision in *Grove City College v. Bell*, and to restore the effectiveness and vitality of the four major federal civil rights laws that prohibit discrimination in programs, activities, and services receiving federal financial assistance. For civil rights coverage purposes, the law broadly defines the terms “program” or “activity.

J. Executive Order (EO) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations identifies as discrimination, program actions taken, which adversely affect the health and environment of minority populations (i.e., ecosystems, human health, pollution and noise, historic/religious environmental effects). The EO provides coverage for federally conducted programs,

²⁰ United States Department of Interior Civil Rights Directive 2011-01
https://www.doi.gov/sites/doi.gov/files/migrated/pmb/eco/directives/upload/Civil-Rights-Directive-2011-01CProcedures-11_5_2010-wk.pdf

activities, and services and notes that the same duties are relevant to federal financial assistance programs, activities, and services covered under Title VI of the Civil Rights Act of 1964.

K. EO 13160, Nondiscrimination on the Basis of Race, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs ensures equal opportunity in government educational programs, activities, and services.

Complainants argue that the first harms caused by WVSHPO in 2017 to not adequately review the Cemetery for historical context in the Section 106 process caused an adverse domino effect and “fruit from the poisonous tree” that allowed other government agencies, such as WVDEP and WVDOT, to proceed with approving permits which led to irreparable harm to the Cemetery, its burials, its descendants, the archaeological significance, and African American culture and heritage.

E. Request

Based upon the foregoing, Complainants request that the DOI accept this complaint and conduct an investigation to determine whether WVSHPO violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and 40 C.F.R. Part 7 by failing to properly implement the Section 106 procedure. The haphazard Section 106 process caused a disparate impact on the Cemetery, which was deemed not eligible for inclusion on the NRHP. The cemetery faced additional disparate impacts when the non-complaint Section 106 process was erroneously cited in subsequent permits, or in the case of the NPDES Stormwater construction permit not obtained at all, to claim that the required historic preservation considerations had been met. As a result, construction was allowed to commence without proper consideration made to the potential effects on the Cemetery.

The Complainant request that SHPO begin a “Post-Review Discovery” process as described in 36 CFR § 800.13 based on Mr. Surkamp’s report received by SHPO May 3, 2019.

The Complainants request the a “Council review of section 106 compliance” be performed per 36 CFR § 800.9. Special attention to part (c) “Intentional adverse effects by

applicants”, is requested, as construction by Rockwool after the release of the NPDES stormwater construction permit but before field surveys could evaluate structures located on the property to conclude the Section 106 process, may have been intentionally hidden from SHPO for the purpose of destroying the historic setting before it could be evaluated.

If violations of Title VI of the Civil Rights Act of 1964 are discovered and WVSHPO is unable to demonstrate a substantial, legitimate justification for its actions, and does not voluntarily implement a less discriminatory alternative that is practicable, Complainants further petition the DOI to initiate proceedings to deny, annul, suspend, or terminate DOI financial assistance to WVSHPO.

VI. RECIPIENT: WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

The United States Environmental Protection Agency (EPA) awards grants on an annual basis to many state and local agencies that administer continuing environmental programs under EPA’s statutes. As a condition of receiving funding, recipient agencies must comply with EPA’s Title VI regulations, which are incorporated by reference into the grants. EPA’s Title VI regulations define a “recipient” as “any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient.” Title VI creates for recipients a nondiscrimination obligation that is contractual in nature in exchange for accepting Federal funding. Acceptance of EPA funding creates an obligation on the recipient to comply with the regulations for as long as any EPA funding is extended.

Under amendments made to Title VI, by the Civil Rights Restoration Act of 1987, a “program” or “activity” means all of the operations of a department, agency, special purpose district, or other instrumentality of a state or a local government, any part of which is extended Federal financial assistance. Therefore, unless expressly exempted from Title VI by Federal statute, all programs and activities of a department or agency that receives EPA funds are subject to Title VI, including those programs and activities that are not EPA-delegated. For example, the issuance of “state-only” water pollution control permits under programs, such as WVDEP’s oil

and gas stormwater construction permitting program, that do not derive their authority from EPA's National Pollution Discharge Elimination System (NPDES) delegation, but directly from the Clean Water Act and its WV state counterpart, are nevertheless part of a program or activity covered by Title VI regulations, if the recipient receives any funding from EPA.

A. Federal Funding

As shown in Table 1 below, WVDEP was a recipient of financial assistance from EPA at the time of the alleged discriminatory act and remains a recipient of financial assistance from EPA.

State of West Virginia - FY 2019 Federal Programs 58

**ENVIRONMENT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE WATER POLLUTION CONTROL, SECTION 106**

Description:
This grant program provides support for the basic water pollution control activities of the state. Permitting and enforcement are included in this grant.

Grantor: U.S. Environmental Protection Agency

Is "Maintenance of Effort" required? Yes

Financial Information	Fund	Fiscal Year	Organization
	8708	2019	0313
	Federal	State	Local
Matching Formula	100%	0%	0%
Federal Catalog Number	Actual Receipts FY 2017	Estimated Receipts FY 2018	Estimated Receipts FY 2019
66.419	\$1,345,300	\$1,500,000	\$2,000,000

Comments:
Maintenance of Effort is \$211,947.

**ENVIRONMENT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
UNDERGROUND STORAGE TANKS**

Description:
Funding for compliance monitoring and enforcement of the technical regulations concerning underground storage tanks.

Grantor: U.S. Environmental Protection Agency

Table 1: WVDEP financial assistance from EPA.

B. Timeliness of Complaint

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving Federal financial assistance must be filed within 180 days after the alleged discriminatory act. The issuance of Mountaineer's Registration No. WVR311281 under WV

General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities, occurred on March 29, 2019. The 180 day limitations period ends September 24, 2019. This complaint was sent by overnight delivery to U.S. EPA External Civil Rights, Compliance Office (2310A), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460 and emailed to Title_VI_Complaints@epa.gov on September 23, 2019.

C. Discriminatory Act(s)

1. Background on the Mountaineer Gas Route 9 Extension Project

When a new intrastate natural gas pipeline construction project does not cross a state border, the responsibility for approval of the pipeline route falls to the individual states, and FERC does not play a role. The permitting process for such intrastate pipelines varies from state to state and may involve different federal, state, and local stakeholders. Unlike FERC's interstate pipeline siting and approval process, the intrastate process in most cases does not use a lead agency to authorize and coordinate siting and environmental reviews. Whereas FERC's process is rigorous, intrastate pipeline siting is crude and haphazard.

In a recent General Accountability Office (GAO) study, representatives from public interest groups expressed that it is more difficult for the public to comment on proposals for intrastate pipelines because the state processes are not transparent, and the public may not learn about the pipelines until after they have been approved. There is no uniform standard for right-of-way agreements and eminent domain authority, and procedures vary by state. Overall, it concluded that the intrastate process is challenging to navigate and can put federally protected resources, including cultural resources at risk. The lack of meaningful public participation was noted as a contributing factor to poor outcomes of environmental and socio-economic impacts.

That is the case in West Virginia. Mountaineer had to overcome only two regulatory hurdles in getting its pipeline project built:

1. Public Service Commission (PSC) approval of a customer rate tariff allowing them to charge existing customers throughout the state to pay the extra amount in their every month gas bills to fund the Route 9 Expansion Project; and

2. WVDEP approval of a Construction Stormwater General Permit Registration allowing them to begin to trench and place the pipeline into the ground.

For both approvals, the level of stakeholder involvement required was minimal. In fact, the citizens of Berkeley County and Jefferson County had no firm idea of the path the pipeline would take until the Stormwater Permit went final on March 29, 2019. Maps released when the permit went out for a formal 30 day comment period, January 25 to February 25, 2019, were the wrong maps. Moreover, the public was denied a promised public hearing.

2. Discriminatory WVDEP Policies and Procedures

WVDEP's policies and practices in issuing Mountaineer's Route 9 Expansion Project stormwater permit violated U.S. Civil Rights Act Title VI disparate impact regulations. The following THREE acts that involve discriminatory policies and practices are at issue:

1. The permit applicant provided incorrect mapping and documentary easements; WVDEP failed to check their veracity or accuracy;

2. The permit applicant proposed and then used illegal construction standards; WVDEP failed to notice that the pipeline would be installed in prohibited areas;

3. WVDEP prevented public input during the permitting process and hid the details of the revised pipeline route until it was too late;

Each of these WVDEP policies and procedures are discussed in detail below.

a. The permit applicant provided incorrect mapping and documentary easements; WVDEP failed to check their veracity or accuracy

i. Property Ownership and Easement Errors

Because WVDEP permit reviewers rely exclusively on the permit applicant to provide correct construction standards and details, including correct right of ways and easements, errors can be introduced into the permitting process when the applicant is either mistaken or purposely obscures the facts. Some errors can be significant. The WVDEP policy of not verifying—even

spot checking—basic information provided by the applicant is potentially harmful to program outcomes, including preserving compliance with Title VI. In the case of Mountaineer, errors in the permit application not caught or corrected by the permit reviewer caused disparate harm to the Complainants.

Mountaineer maps submitted to WVDEP in the permit application had several property ownership discrepancies. Mountaineer inaccurately mapped the A.M.E. Church property as being (b) (6) Privacy, (b) (7)(C) Enforcement Privacy property. ([Exhibit HH and II](#)). Note the (b) (6) Privacy, (b) (7)(C) Enforcement Privacy property is next to the A.M.E. Church property and (b) (6) Privacy, (b) (7)(C) Enforcement Privacy did not have to give a pipeline easement ([Exhibit JJ](#)).

On April 19, 2019, Mountaineer recorded an easement in the Jefferson County Clerk's Office which included the A.M.E. Church property ([Exhibit KK](#)). It is unclear how Mountaineer Gas could have received easement permission from (b) (6) Privacy, (b) (7)(C) Enforcement Privacy to go through the A.M.E. Church property with the gas pipeline. As stated in subsection "[4. African Methodist Episcopal Church of Kearneysville Affiliation](#)" of this complaint, no trusteeship or transfer of ownership has been discovered associating (b) (6) Privacy, (b) (7)(C) Enforcement Privacy to the A.M.E. Church or its property. This is a case of a blatant theft of property rights.

WVDEP approval of Mountaineer Gas' pipeline route and maps has resulted in the possible disturbance or removal of burials at the A.M.E. Church as well as destroying the archaeological integrity of the area.

ii. Incorrect Boundaries

WVDEP permit review did not notice that Mountaineer's pipeline plans show the Cemetery property boundaries incorrectly and drastically reduced in size. ([Exhibit HH](#)) and ([Exhibit LL](#)) Mountaineer claims in the Plan Set submitted with the permit application that "Boundary lines as shown herein are primarily based on tax parcel information derived from GIS databases. Accuracy is not verified." It is unclear where this error could have come from, as the Jefferson County GIS tax maps do show the correct Cemetery property boundary.

If it was advantageous to the permit applicant to shave corners off a Title VI-protected community's significant historical, cultural, and archeological resources in order to enable the

pipeline to go through, then who is to stop them? The permit writer does not look, the professional engineer hired by Mountaineer who stamps the plans admits that accuracy is not verified, and members of the public—including Title VI-protected stakeholders who could have in one glance told the permit writer this is an inaccurate representation of the Cemetery—could not view the maps. Not only that, but the maps and route were changed only one week before the permit was granted.

In addition to the incorrect property boundary, Mountaineer’s maps show only a small shaded area to be the Cemetery. But, as documented in our ground-penetrating radar survey, there are many graves located outside of this shaded area and along the Cemetery’s property boundaries. Again, such information could have been brought forth in a transparent stakeholder involvement permitting process, but WVDEP policy and procedures prevented that.

One might ask, “How can a WVDEP permit writer check on the accuracy of a map—is that their job?” The answer is simple: just look at the Stormwater Permits that have already approved in the same area. For example, Mountaineer’s maps of the Cemetery boundaries and size differ significantly with Rockwool’s stormwater construction site maps which correctly depict the correct boundaries and had already been approved by the same permit writer. ([Exhibit AA](#))

Another question might be: what is the significance of a little discrepancy in boundary lines? Mountaineer’s incorrect boundaries of the Cemetery could not allow for proper construction setbacks. Graves outside of the shaded area and incorrect boundaries have been put at risk of being disturbed and the back portion of the Cemetery abutting Rockwool’s property has already been disturbed. Such disturbance means irretrievable loss of archeological setting and possibly remains and materials. For the Title VI-protected individuals whose ancestors lay in that Cemetery, that small boundary difference meant the whole world.

iii. Limits of Disturbance (LOD) errors and alignment of the pipeline

The WVDEP permit reviewer needs an accurate estimate of the amount of land expected to be disturbed during construction as well as the total linear extent of any proposed pipeline. Unfortunately, Mountaineer provided estimates that varied from document to document and

changed during the permitting process. Moreover, the routing of pipeline changed significantly in the middle of the formal public comment period and the public was not informed. Because of the cancellation of the public hearing that was at first advertised and then rescinded, no one was aware of these changes. The only allowed comments were written ones based on the inaccurate maps. Also concerning is that the U.S. Fish and Wildlife consultation letter on possible Endangered Species Act (ESA) impacts was based on incorrect data.

	LOD (acres)	Pipeline Length (miles)
Nov. 21, 2018 Karst Survey	unknown	7.9
Dec. 7, 2018 Permit Application	31.34	7.9
Jan. 25, 2019 Public Notice	32.64	4.93
Feb. 2018 SWPPP	25.38	4.85
USFWS Consult. Letter	17	6.57
March 29, 2019 Permit Approval Letter	25.38	4.85

Table 2: Limits of disturbance (LOD) and pipeline alignment of Mountaineer Gas Route 9 Extension Project cited in different documents

b. The permit applicant used illegal construction methods; WVDEP failed to notice that the pipeline would be installed in prohibited areas.

i. Illegal construction

Intrastate pipeline siting, unlike the FERC siting process, has no oversight. The planned routes and methods of construction--as in the case of the Route 9 Extension Project--have very little scrutiny. Mountaineer is trusted to identify and comply with applicable federal, state, and local rules and regulations in order to legally place pipe in the ground. But who checks on that? The WVDEP permit reviewer's role is limited. Their focus is on the appropriateness of sediment

and erosion controls. But what if those controls are placed in an entirely prohibited area? Is there a consequence to the failure of WVDEP to have any kind of responsibility to determine if the sediment and erosion controls that they approve are even approvable, if the location and method of construction is illegal?

General Permits, like the Oil and Gas Construction Stormwater Permit, are set up with basic requirements well known and pretty much boilerplate. Everything from the applicant gets entered into WVDEP's Electronic Submission System (ESS), which makes for a useful "checklist" type of approach, but fails to require truthfulness or accuracy. The days of permit writers meeting the company engineer to pore over site plans are gone.

One significant state pipeline construction standard, put forth in an October 1, 2018, WV Department of Transportation, Division of Highways, Memorandum²¹ was missed by both Mountaineer and the WVDEP permit reviewer. That memo is addressed to "All District Engineers/Managers" and signed by Thomas J. Smith, P.E., Secretary of Transportation and Commissioner of Highways ([Exhibit MM](#)).

The key phrases are extracted here:

"SUBJECT: OIL AND GAS PIPELINE CROSSING REQUIREMENTS

A. CONTROLLED/LIMITED ACCESS (CA) HIGHWAYS

1. GENERAL

... Longitudinal pipeline installations are not permitted within the DOH Right of Way.

...

B. NON-CONTROLLED/LIMITED ACCESS HIGHWAYS

1. GENERAL

Non-CA Highways include 1-lane, 2-lane or multi-lane roadways with no type of access control, such as US, WV, County Routes, HARP (Home Access Road Program Routes) and State Forest Routes under the control of DOH. Longitudinal pipeline installations are not permitted within the DOH Right of Way."

²¹ WV Department of Transportation, Division of Highways, October 1, 2018, Memorandum https://transportation.wv.gov/highways/maintenance/Documents/Oil%20and%20Gas%20Pipeline%20Crossing%20Requirements_signed%20by%20CC_Oct%202018.pdf

The memo states that it: “provides additional guidance for preparation of permit requests to construct facilities for pipelines that carry natural gas, petroleum products or other similar materials produced and carried through pipelines, along with the requirements found in the latest edition of *THE ACCOMMODATION OF UTILITIES ON HIGHWAY RIGHT OF WAY AND ADJUSTMENT AND RELOCATION OF UTILITY FACILITIES ON HIGHWAY PROJECTS MANUAL*. In any instance where discrepancies exist between this guidance and the manual, these guidelines shall prevail.”

Is it possible this guidance applies to all portions of the Mountaineer Route 9 Extension Project where pipeline was installed longitudinally in the DOH Right of Way? That would definitely include the stretch along Coast Guard Lane, which is a marked County Route 9/57; as well as all of Good Folks Road, which is marked County Route 48/3. In both of these cases, Mountaineer pipeline was installed longitudinally and within the DOH ROW. ([Exhibits NN and OO](#)).

The guidance does not address the longitudinal installation of pipeline within the DOH ROW of a bike lane which borders on a Controlled Access Highway, i.e. Route 9. Our Complaint covers that concerning issue in Section “[VII. RECIPIENT: THE FEDERAL HIGHWAY ADMINISTRATION](#)” of this complaint, addressed to the FHWA.

It is our contention that the Mountaineer Pipeline was illegally installed in several key places, perhaps as much as half its entire route (2.4 miles out of the total 4.85 linear miles). The WVDOH permit reviewer was either unaware of this guidance memo or ignored it. Did Mountaineer Gas know about the memo? That is their job. How about the WVDOH engineer who processed the DOH Encroachment and Utilities Installation Permits--was he or she aware of this prohibition? Because the Complainants contend that they should have known and therefore prevent the Title VI violation and discriminatory harm, both USDOT and FHWA are named in this Title VI complaint (Sections “[VI. RECIPIENT: WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS](#)” and “[VII. RECIPIENT: THE FEDERAL HIGHWAY ADMINISTRATION](#)”).

c. WVDEP prevented public input and hid changes to the permit

WVDEP decided that due to expressed public interest and concern, the Oil & Gas Construction Stormwater Application for Mountaineer's Route 9 Extension Project would go to public review. The review was to include a 30 day period of public comment and a scheduled public hearing. WVDEP required Mountaineer to pay for placing an advertisement in the Legal Notice section of the Martinsburg Journal and the Department of Water and Waste Management (DWWM)²², the subunit of WVDEP responsible for stormwater permitting, wrote the text for the advertisement ([Exhibit PP](#), Public Notice No. SM-4-2019). They subsequently placed it in the Journal. It ran in the evening edition of a single day: Friday, January 25, 2019 ([Exhibit QQ](#)).

There is no certified copy of that placement in the administrative record, which is a violation of WVDEP procedure. The copy we obtained was in a repository of WVDEP responses to a FOIA request from (b) (5) Privacy, (b) (7)(C) Enforced as part of the evidentiary proceedings in his EQB appeal of the permit (see discussion in subsection "[G. Pending Administrative Reviews](#)"). The photocopy of the actual newspaper notice was provided by (b) (5) Privacy, (b) (7)(C) Enforced Eastern Panhandle Protectors.

The following WVDEP policies and procedures used during the Public Comment period constitute violations of Title VI and resulted in disparate harm to the Cemetery and Complainants:

i. The stated activity in Public Notice No. SM-4-2019 is incorrect.

As this language was written by DWWM, the error falls to WVDEP. The Activity changed significantly during the comment period (ran from January 25 — February 25, 2019), as DWWM well knew. On February 18, 2019, with 1 week remaining in the comment period, DWWM instructed Mountaineer to remove their application from the ESS and submit a new one. [Exhibit RR](#) shows the time/date stamp of all the ESS uploads associated with the permit, and the activity on 2/14 and 2/18/2019 is significant. The resubmitted application was never re-advertised, as it should have been, so the application that public commenters had to work with was the old one. Significant changes in the 2/18/2019 non-advertised resubmittal include:

²² <https://dep.wv.gov/WWE/Pages/default.aspx>

- **REMOVAL** of 5.96 acres of LOD;
- **SHORTENING** the linear extent of the pipeline by 3.05 miles;
- **CANCELLING** the installation of pipeline near the (wealthy) sub-divisions, (influential) residential properties, and (profitable and influential) commercial enterprises in Berkeley County;
- **RE-ROUTING** the pipeline so that it is now placed directly on top of the worst sinkhole (No. R9E-2) identified in the Nov. 21, 2018, GeoConcepts Report;
- **RE-ROUTING** the pipeline so it would now be constructed within INCHES of historic remains of the African Methodist Episcopal (A.M.E.) Church and suspected burial grounds;

ii. The February 21, 2019 scheduled Public Hearing at the Ranson Civic Center was cancelled. WVDEP refused to reschedule another one.

Instead, they approved the permit summarily on March 29, 2019 ([Exhibit SS](#)) —an action that was opposed by DWWM staff, but overridden at the highest level: the WVDEP Secretary himself, Austin Caperton, a longtime coal executive and cousin of former Gov. Gaston Caperton.

²³ The following April 5, 2019, news article²⁴ sums it up:

“As early as last November, citizens of the Eastern Panhandle began contacting the DEP to request a public hearing on the pipeline extension.

In mid-January, the DEP contacted (b) (5) Privacy, (b) (7)(C) Enforcement to let her know the hearing would be scheduled due to the high level of public interest.

At a different DEP hearing on January 30th, representatives of the DEP told members of the public that the pipeline hearing would have to be rescheduled due to a conflict at the Ranson Civic Center.

“Since then, we have been in constant contact with the DEP,” (b) (5) Privacy, (b) (7)(C) said. “At first, the agency informed us that they were having trouble finding a venue. By the end of February, after the originally scheduled date had passed, officials gave us the no comment treatment when asked about the hearing. Then, on March 6, an official stated that someone from Ranson has told him that ‘they couldn’t guarantee the DEP’s safety.’”

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<http://wvmetronews.com/2017/01/13/coal-exec-austin-caperton-cousin-of-former-gov-gaston-caperton-to-oversee-environmental-agency/>

²⁴ <https://morgancountyusa.org/?p=3992>

“Finally, our local elected officials got involved and requested the hearing on our behalf. This was to no avail. The DEP did what they probably planned to do from the start, regardless of citizens’ concerns: approve the permit and allow pipeline work to begin.””

D. Adverse Impacts

Since a proper archaeological survey was never performed by WVSHPO and the lack of oversight by the WVDEP regarding Mountaineer Gas' pipeline route on the A.M.E. Church property, it may be impossible now to determine if graves were there and disturbed by the pipeline construction. We are not aware of a Mountaineer Gas archaeologist being present during pipeline construction. Failure to follow these procedures has resulted in the possible disturbance or removal of burials near the Cemetery as well as destroying the archaeological integrity of the area.

The following adverse impacts have occurred:

1. Construction fence installed

Without permission or notice, on April 9 & 10, 2019, construction fence was installed inches away from unmarked graves. ([Exhibit TT](#)) Not only was this disrespectful and may have caused damage to graves, it gave the impression that the Cemetery should not be visited.

2. Tree cutting

On April 15, 2019, Mountaineer Gas or their contractor was video recorded clear cutting trees along the Cemetery boundary and cut into the Cemetery farther than necessary.^{25, 26} One tree was removed beyond Rockwool’s proposed property marker stake ([Exhibit UU](#)). Other trees and their limbs were damaged and precariously hung into the Cemetery. These damaged trees and limbs were a risk to individuals’ safety visiting the Cemetery and to the Cemetery burials. Also, these trees could be slave burial markers.

²⁵ <https://www.facebook.com/easternpanhandleprotectors/videos/379181332681660/>

²⁶ <https://www.facebook.com/easternpanhandleprotectors/videos/169977890595221/>

3. Blocking Road - Pipeline Construction

From April to May 2019, the gas pipeline construction near the Cemetery caused the descendants and Cemetery visitors many hardships and obstacles trying to visit the Cemetery. On May 2, 2019, the only access to the Cemetery, Granny Smith Lane, was completely blocked by Mountaineer Gas' pipeline construction activities. ([Exhibit - VV](#)) This denial of Cemetery access and other construction activities created a hostile environment and violated the descendants' and Cemetery visitors' rights under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc.

E. Authority - WV Department of Environmental Protection

EPA guidance provides that the External Civil Rights Compliance Office (ECRCO) will accept for processing only those Title VI complaints that include at least an allegation of a disparate impact concerning the types of impacts that are relevant under the recipient's permitting program. The discriminatory policies and procedures outlined in subsection "[2. Discriminatory WVDEP Policies and Procedures](#)" are directly connected to how WVDEP currently reviews and issues registrations under the Oil and Gas Construction Stormwater General Permitting Program. In particular, the lack of a meaningful public participation element to the granting of registrations under the General Permit led directly to disparate harm to the Title VI-protected community of African American descendants of the Cemetery and prohibited them from exercising their basic right of egress to the cemetery and enjoyment of that special space. Two simple things that WVDEP could have done to prevent the disparate harm from happening were to: 1. Not allow a revision of the proposed pipeline route without seeking public input; and 2. Listen to and respect the pleadings of the potentially impacted parties before the harm occurred.

F. Justification and Less Discriminatory Alternatives

"If the recipient can neither rebut the initial finding of disparate impact nor develop an acceptable mitigation plan, then the recipient may seek to demonstrate that it has a substantial, legitimate interest that justifies the decision to proceed with the agency action notwithstanding the disparate impact." Interim Guidance at 4. "[T]here must be some articulable value to the

recipient in the permitted activity.” Id. at 11. “The justification must be necessary to meet ‘a legitimate, important goal integral to [the recipient’s] mission.’”

Enabling the installation of a natural gas pipeline to provide up to 47,500 Dekatherms per day (Dth/d) of incremental firm transportation service to the Rockwool Ranson facility is not WVDEP’s mission. Protecting human health and the environment when the pipeline company applies for a stormwater control permit to undertake that action is. WVDEP’s official mission statement has changed over the years, evolving from this: “Use all available resources to protect and restore West Virginia’s environment in concert with the needs of present and future generations.”²⁷ to this: The West Virginia Department of Environmental Protection’s mission is to promote a healthy environment. To do this, the agency must protect the environment while leaving room for a sustainable industry base. Such a task requires careful balance. Its major divisions – protecting air, land, and water – plus an office regulating the oil and gas industry, must be circumspect and fair in regulating industry, permitting extraction of natural resources and protecting the public from potential pollution hazards.”²⁸ Nevertheless, we believe a sustainable industry base should not translate into violating Civil Rights.

A less discriminatory alternative to the Title VI-violating policies and procedures in place at the WVDEP today would be to install a fair and impartial General Permitting process that does not violate Civil Rights.

G. Pending Administrative Reviews

In certain circumstances, EPA may decide that a complaint will be “closed” because a pending administrative review or appeal which “could affect the circumstances surrounding the complaint and any investigation that ECRCO may conduct.” In such cases, EPA may “may waive the 180 day filing time limit if the complaint is filed within a reasonable time period after the conclusion of the administrative appeal process.” There is an active appeal of Mountaineer’s General Permit Registration at DEP’s Environmental Quality Board (EQB). On April 29, 2019,

²⁷ <https://www.dep.wv.gov/dlr/oer/voluntarymain/Documents/Risk%20Assessment%20Guide.pdf>

²⁸ <https://dep.wv.gov/pio/Documents/2016-17%20Annual%20Report.pdf>

(b) (6) Privacy, (b) (7)(C) Enforcement Privac filed a timely appeal to Mountaineer's permit.²⁹ It was based on Mountaineer's failure to comply with the Endangered Species Act (ESA). Moreover, all of the Route 9 extension pipeline construction is complete and the disparate harm already done to the Complainants. The EQB has pushed (b) (6) Privacy, (b) (7)(C) Enfor evidentiary hearing back twice already; it will not happen until Dec. 12-13, 2019. The Complainants here are not a party to that appeal. Its disposition has no bearing on our Title VI complaint.

H. Request

Based upon the foregoing, Complainants request that the EPA OECR accept this complaint and conduct an investigation to determine whether WVDEP violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and 40 C.F.R. Part 7 in the issuance of Mountaineer Registration No. WVR311281 on March 29, 2019. If a violation is found and WVDEP is unable to demonstrate a substantial, legitimate justification for its action and to voluntarily implement a less discriminatory alternative that is practicable, Complainants further petition the USEPA to initiate proceedings to deny, annul, suspend, or terminate EPA financial assistance to WVDEP.

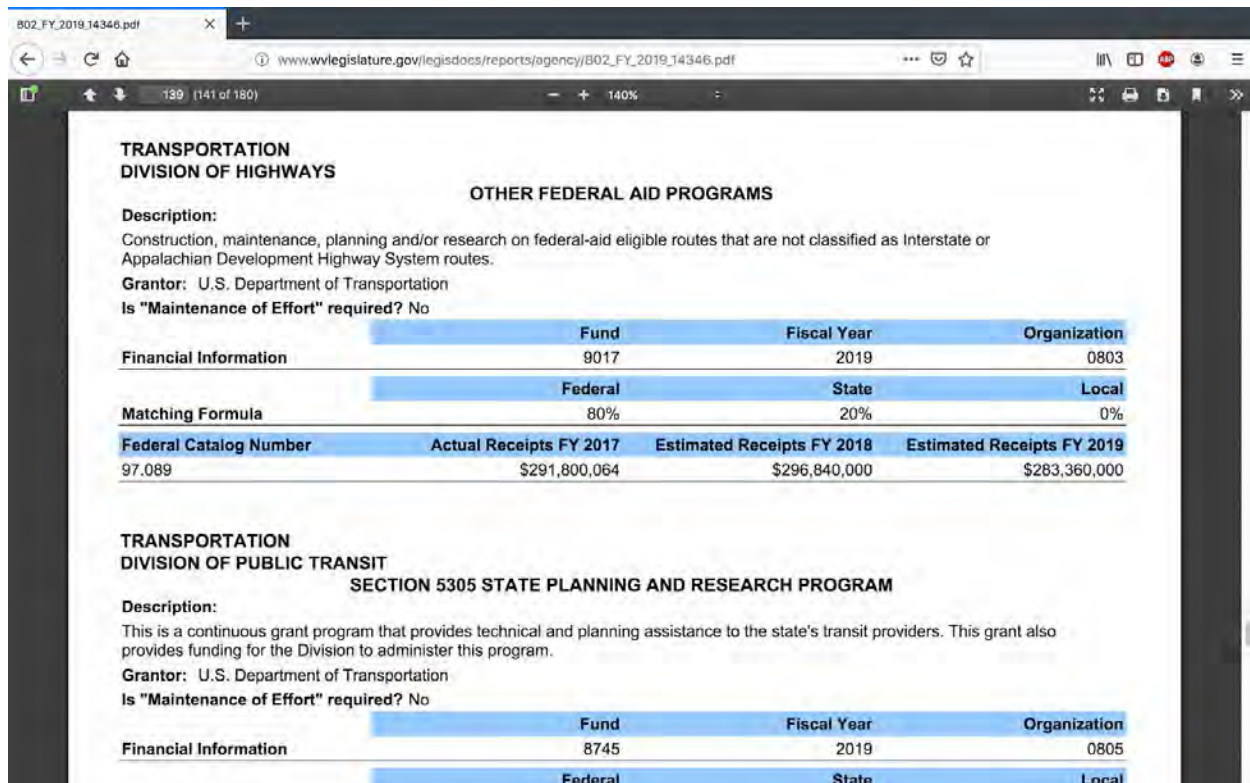
VII. RECIPIENT: WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS

The United States Department of Transportation (USDOT) awards funding on an annual basis to many state DOTs that administer continuing highway construction, maintenance, and other programs under USDOT statutes. As a condition of receiving funding, recipient agencies must comply with USDOT's Title VI regulations, which are incorporated by reference into the grants. Title VI creates for recipients a nondiscrimination obligation that is contractual in nature in exchange for accepting Federal funding. Acceptance of USDOT funding creates an obligation on the recipient to comply with the regulations for as long as any USDOT funding is extended.

²⁹ (b) (6) Privacy v. Director, Division of Water and Waste Management, DEP, and Mountaineer Gas. EQB Appeal No. (b) (6) Privacy-EQB. It was Certified at EQB on May, 15, 2019, and an evidentiary hearing set for May 23, 2019. His request to stop work on the pipeline installation and stay the permit was denied. The hearing was rescheduled to Aug. 8-9, 2019. It was for a second time rescheduled, now set for Dec. 12-13, 2019.

A. Federal Funding

As shown in Table 2 below, the WV Division of Highways (DOH) within the WVDOT was a recipient of financial assistance from USDOT at the time of the alleged discriminatory act and remains a recipient of financial assistance.



The screenshot shows a PDF document titled "B02_FY_2019_14346.pdf" from the website "www.wvlegislature.gov/legisdocs/reports/agency/B02_FY_2019_14346.pdf". The document contains two tables of financial information.

TRANSPORTATION DIVISION OF HIGHWAYS

OTHER FEDERAL AID PROGRAMS

Description:
Construction, maintenance, planning and/or research on federal-aid eligible routes that are not classified as Interstate or Appalachian Development Highway System routes.
Grantor: U.S. Department of Transportation
Is "Maintenance of Effort" required? No

	Fund	Fiscal Year	Organization
Financial Information	9017	2019	0803
	Federal	State	Local
Matching Formula	80%	20%	0%
Federal Catalog Number	Actual Receipts FY 2017	Estimated Receipts FY 2018	Estimated Receipts FY 2019
97.089	\$291,800,064	\$296,840,000	\$283,360,000

TRANSPORTATION DIVISION OF PUBLIC TRANSIT

SECTION 5305 STATE PLANNING AND RESEARCH PROGRAM

Description:
This is a continuous grant program that provides technical and planning assistance to the state's transit providers. This grant also provides funding for the Division to administer this program.
Grantor: U.S. Department of Transportation
Is "Maintenance of Effort" required? No

	Fund	Fiscal Year	Organization
Financial Information	8745	2019	0805
	Federal	State	Local

Table 3: WV Division of Highways (DOH) within the WVDOT was a recipient of financial assistance from USDOT.

B. Timeliness of Complaint

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving Federal financial assistance must be filed within 180 days after the alleged discriminatory act. The issuance of Mountaineer's Registration No. WVR311281 under WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities, occurred on March 29, 2019. The 180 day limitations period ends September 24, 2019. This complaint was sent by overnight delivery to the Department of Transportation,

Departmental Office of Civil Rights, 1200 New Jersey Ave, S.E., Washington, DC 20590 on September 23, 2019.

C. Discriminatory Act

The alleged discriminatory act on the part of West Virginia Department of Transportation (WVDOT) Division of Highways (DOH) is the failure to provide legal and appropriate Right of Way (ROW) clearances and to ignore the publication of a WVDOT guidance which expressly prohibits the installation of natural gas pipeline in the longitudinal path of a WV roads; these two discriminatory acts contributed to the Title VI-violating issuance to MOUNTAINEER GAS COMPANY (Mountaineer) of Registration No. WVR311281, March 29, 2019, under WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities ([Exhibit SS](#)).

This registration covered the discharge of stormwater associated with the disturbance of approximately 25.38 acres of land and consists of the installation of approximately 4.85 miles of natural gas distribution pipeline in Berkeley and Jefferson Counties, West Virginia. The project included access roads, 12.22 acres entirely within the DOH Right-of-way and 13.16 acres of private Right-of-way. [Exhibit WW](#) is a closeup of the Overall Site Map, which says, “Right of Way information provided by West Virginia Division of Highways District 5.”

In a guidance memo put forth on October 1, 2018, addressed to “All District Engineers/Managers” and signed by Thomas J. Smith, P.E., Secretary of Transportation and Commissioner of Highways ([Exhibit MM](#)), the WV Department of Transportation, Division of Highways Memorandum,³⁰ prohibits longitudinal pipeline installation in the DOH right of way. This applies to both Controlled Access Highways and all State and County Roads. The key phrases are excerpted here:

“SUBJECT: OIL AND GAS PIPELINE CROSSING REQUIREMENTS

A. CONTROLLED/LIMITED ACCESS (CA) HIGHWAYS

1. GENERAL

³⁰ WV Department of Transportation, Division of Highways, October 1, 2018, Memorandum <https://transportation.wv.gov/highways/maintenance/Documents/Oil%20and%20Gas%20Pipeline%20Crossing%20Requirements%20signed%20by%20CC%20Oct%202018.pdf>

... Longitudinal pipeline installations are not permitted within the DOH Right of Way.

...

B. NON-CONTROLLED/LIMITED ACCESS HIGHWAYS

1. GENERAL

Non-CA Highways include 1-lane, 2-lane or multi-lane roadways with no type of access control, such as US, WV, County Routes, HARP (Home Access Road Program Routes) and State Forest Routes under the control of DOH. Longitudinal pipeline installations are not permitted within the DOH Right of Way.”

The memo states that it: “provides additional guidance for preparation of permit requests to construct facilities for pipelines that carry natural gas, petroleum products or other similar materials produced and carried through pipelines, along with the requirements found in the latest edition of *THE ACCOMMODATION OF UTILITIES ON HIGHWAY RIGHT OF WAY AND ADJUSTMENT AND RELOCATION OF UTILITY FACILITIES ON HIGHWAY PROJECTS MANUAL*. In any instance where discrepancies exist between this guidance and the manual, these guidelines shall prevail.”

We contend that his guidance applies to all portions of the Mountaineer Route 9 Extension Project where pipeline was proposed to be and actually was installed in longitudinal fashion along the side and within the legal limits of the DOH right of way. That would definitely include the stretch along Coast Guard Drive, marked County Route 9/57; as well as all of Good Folks Road, marked County Route 48/3. In both of these cases, Mountaineer pipeline was installed longitudinally within the DOH ROW. ([Exhibits NN and OO](#)).

Moreover, we believe that Mountaineer knew about the prohibition--or at least learned about it around February 14, 2019, when they replaced illustrations in their WVDEP application of obvious intent to install in the longitudinal (i.e., along with the traffic) course of the DOH rights of way ([Exhibits XX](#)). Mountaineer pipeline was illegally installed in several key places, perhaps as much as half its entire route (2.4 miles out of the total 4.85 linear miles). [Exhibits YY](#) shows the actual longitudinal installation occurring on Coast Guard Drive.

The DOH District Engineer was either unaware of this guidance memo or ignored it. The DOH District 5 office had to collect road bonds and agreements (Encroachment Permits) prior to

Mountaineer beginning these illegal installs, and therefore they are complicit. Because we contend that DOH should have known and said nothing, WVDEP granted Mountaineer a flawed construction stormwater permit that resulted in pipeline installation and disparate harm to the Complainants.

D. Authority - WV Department of Transportation, Division of Highways

DOT guidance also requires a Title VI complaint to move forward only if it includes at least an allegation of disparate impact concerning the types of impacts that are relevant to the recipient's construction, maintenance, and other planning, research, and USDOT rule implementation programs. As discussed in subsection "[C. Discriminatory Act](#)" of this section, DOH has an affirmative requirement to oversee, approve, and inspect all Utility Installations that occur within a DOH Right of Way ROW). In addition, to individual crossing permits that are required for each location at which the pipeline transversely crosses a state-managed highway, it also maintains oil and gas information sheets on pipelines requesting installations that are in or impact on the DOH ROW. Coring requests where a pipeline crosses under a road must include Plan Profiles and Cross-Section Views. A Traffic Control Plan must be submitted. Finally, a DOH inspector must inspect the pipeline crossing work when it is finished. Given all of those interactions and mission requirements, it begs disbelief how the official October 15, 2018, DOH Guidance³¹ that PROHIBITS the installation of natural gas pipelines of any sort in the longitudinal ROW of any state road could have been overlooked. The disparate impact suffered by the Cemetery descendants could have been avoided if the DOH engineers responsible for the Mountaineer project had done their job.

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https://transportation.wv.gov/highways/maintenance/Documents/Oil%20and%20Gas%20Pipeline%20Crossing%20Requirements_signed%20by%20CC_Oct%202018.pdf

E. Request

Based upon the foregoing, complainants request that the USDOT accept this complaint and conduct an investigation to determine whether WVDOT violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and 40 C.F.R. Part 7 for the failure to prevent Mountaineer Gas from installing a natural gas pipeline in the longitudinal stretch of two WVDOT-maintained county roads: Coast Guard Lane and Good Folks Road, against the expressed WVDOT guidance prohibiting such an action. If a violation is found and WVDOT is unable to demonstrate a substantial, legitimate justification for its action and to voluntarily implement a less discriminatory alternative that is practicable, complainants further petition the USDOT to initiate proceedings to deny, annul, suspend, or terminate USDOT financial assistance to WVDOT.

VIII. RECIPIENT: THE FEDERAL HIGHWAY ADMINISTRATION

The Federal Highway Administration (FHWA) is an agency within the U.S. Department of Transportation (USDOT) that supports State and local governments in the design, construction, and maintenance of the Nation's highway system (Federal Aid Highway Program) and various federally and tribal owned lands (Federal Lands Highway Program). Through financial and technical assistance to State and local governments, the Federal Highway Administration is responsible for ensuring that America's roads and highways continue to be among the safest and most technologically sound in the world.³²

A. Funding

Unlike the USDOT that has state agency DOT counterparts, and which are the recipient of federal program funds and grants, the FHWA administers their programs directly to the states, via direct disbursement of highway funds and maintenance of FHWA offices in each state and region. FHWA has its own Office of Civil Rights with unique responsibilities for ensuring Title VI compliance in the state agencies and activities that involve the use of federal highway dollars.

³² <https://www.fhwa.dot.gov/about/>

FHWA Program Areas in which they provide direct assistance to WVDOT include the following:

- Acquisition Management
- Infrastructure
- Planning, Environment, and Realty
- Safety

The two program areas most relevant to this Complaint are 1. Infrastructure and 2. Planning, Environment, and Realty. Infrastructure oversees the use of highway funds to build and maintain highway-associated bicycle and pedestrian projects. The Intermodal Surface Transportation Act of 1991 (ISTEA) first authorized federal transportation dollars to be spent on bicycle and pedestrian projects. The Transportation Equity Act of 1998 (TEA-21) was the first time federal dollars were authorized to be spent on bicycle pedestrian projects within Interstate Highway Corridors.

Note that Federal interstate highway funds can only be used for bicycle and pedestrian facilities if they are in the highway right of way. That is the case with the Route 9 Bike Path.

B. Timeliness of Complaint

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving Federal financial assistance must be filed within 180 days after the alleged discriminatory act. WVDEP's issuance of Mountaineer's Registration No. WVR311281 under WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities, occurred on March 29, 2019. Three days later, on April 2, 2019, Mountaineer began to trench and install pipeline. The date of harm for both these actions is within the 180 day limitations period which ends September 24, 2019, and September 27, 2019, respectively. This complaint was sent by overnight delivery on September 22, 2019 to the Federal Highway Administration, U.S. Department of Transportation, Office of Civil Rights,

1200 New Jersey Avenue, SE, 8th Floor E81-105, Washington, DC 20590. It was also emailed on September 23, 2019, to FHWA.TitleVIcomplaints@dot.gov

C. Discriminatory Act

When Mountaineer decided to place the natural gas pipeline in the longitudinal extent of the Route 9 Bikepath, a multi-modal feature that was designed into the federally-funded Route 9 extension from Martinsburg to Charles Town, they were doing a very unusual thing. We have come up with no other example of a gas pipeline that was--after the fact--installed into a newly built federal-dollar bike path. There are some examples, in congested older locations in New York and New Jersey, where a bike path was built alongside an older highway that shared a utility such as natural gas, sewer, or water. But none has been found that purposefully used a bike path right of way that paralleled a limited access highway for running a gas pipeline.

We believe that is not the purpose of multi-modal projects such as bike paths, funded by the federal government. The ease with which Mountaineer was able to lay their pipe (there were no shared use--they blocked the path off, preventing public access for weeks at a time ([Exhibit ZZ](#)) and the fact that no construction access road had to be built, as they could drive their equipment up onto the paved bike path ([Exhibit AAA](#)) resulted in a very quick installation. This impacted the Cemetery because with the WVDEP granting the construction stormwater permit as fast as they did, and with WVDEP obscuring the path details and refusing to hold a public hearing, no one knew what was happening until it was all over.

This adverse effect was discriminatory in that it meant the burden of having a gas pipeline run alongside the African American Cemetery was a burden not shared by the majority of the citizens of Berkeley County and Jefferson County. However, these same citizens will be able to enjoy the benefits of natural gas, and can now plan their home renovations to take advantage of that newly available resource and disconnect those tiresome old propane log fireplaces in their sunken living rooms.

In addition, maintenance provisions require bicycle and pedestrian facilities built with Federal funds to be maintained in the same manner as other roadway assets.

- Public rights-of-way and facilities are required to be accessible to persons with disabilities through the following statutes: Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. §794) and Title II of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§ 12131-12164).

- The DOT Section 504 regulation requires the Federal Highway Administration (FHWA) to monitor the compliance of the self-evaluation and transition plans of Federal-aid recipients (49 CFR §27.11), including Title VI compliance. The FHWA Division offices review pedestrian access compliance with the ADA and Section 504 as part of their routine oversight activities as defined in their stewardship plans. They have to begin monitoring for Title VI compliance as well, now that a precedent has been set of using bicycle and pedestrian features to quickly throw down fracked-gas distribution lines to the Rockwools of the world.

D. Authority

The Office of Civil Rights manages FHWA responsibilities with respect to Title VI, including assuring that FHWA Division Offices ensure that all Recipients (State Transportation Agencies) have an approved Title VI Plan and submit Annual Update Reports. Additionally, the Division Offices are responsible for ensuring that the State Transportation Agencies are implementing an effective Monitoring Program of their Subrecipients' efforts to effectively implement Title VI. FHWA's National Title VI/Nondiscrimination Program Manager is responsible for coordinating the effectiveness of FHWA's monitoring activities and will partner with other Federal Program Offices and USDOT Modal Agencies (as appropriate) to address opportunities for improved implementation of the Title VI/Non-discrimination Program.³³

E. Request

Based upon the foregoing, complainants request that the FHWA accept this complaint and conduct an investigation to determine whether WVDOT violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and 40 C.F.R. by allowing, either through an affirmative action or a failure of monitoring and oversight, the construction of a natural gas

³³ https://www.fhwa.dot.gov/civilrights/programs/title_vi/

pipeline in the longitudinal stretch of a FHWA-funded bicycle and pedestrian path adjacent to a FHWA-funded limited access highway; said allowance resulting in a disparate harm to an African American Cemetery and its descendents. If a violation is found and WVDOT is unable to demonstrate a substantial, legitimate justification for its action and to voluntarily implement a less discriminatory alternative that is practicable, complainants further petition the FHWA to initiate proceedings to deny, annul, suspend, or terminate financial assistance and program support of WVDOT.

IX. RECIPIENT: JEFFERSON COUNTY COMMISSION

The Jefferson County Commission (JCC) is a public corporation, acting on behalf of the County of Jefferson, a political subdivision of the State of West Virginia, validly created and existing under the Constitution and laws of the State, and is authorized and empowered by the provisions of the Constitution and laws of the State.

The JCC agency, Jefferson County Historic Landmarks Commission (JCHLC); JCC department, Jefferson County Office of Engineering; and the Jefferson County Clerk are listed in this complaint for failure to follow policies and procedures or have established policies and procedures to prevent discrimination, which has resulted in disparate impacts to the Cemetery; its Descendants; African American history, culture, and heritage.

A. Federal Funding

Federal funding has benefited Jefferson County and the JCC mostly as pass through funding from West Virginia state agencies. As listed in the Department of Justice manual, “The financial assistance does not have to relate to a program in which the complainant participates or seeks to participate or used for the complainant’s benefit. Rather, an agency only has to prove that the entity received federal financial assistance when the alleged discrimination occurred.”³⁴ Jefferson County Historic Landmarks Commission received direct grants when the alleged discrimination occurred.

Jefferson County Commission Federal Funding 2017 - 2019

³⁴ Department of Justice Manual, page 27 <https://www.justice.gov/crt/case-document/file/934826/download>

Fed. Agency	Action Date	Award ID	Amount
DOH/FHA	01/19/2017	540340063Z001	\$80,000
DOH/FHA	06/05/2017	540340030Z001	\$336,000
DOH/FHA	06/29/2017	540340063Z001	\$240,000
DOH/FHA	05/31/2017	5409WV003M302	\$355,261
DOH/FHA	04/10/2018	540340063Z001	\$80,000
DOH/FHA	04/10/2018	540051046MS30	\$79,946
DOH/FHA	05/04/2018	540230006Z240	\$655,324
DOH/FHA	05/23/2018	540230006Z240	\$500
DOH/FHA	08/13/2018	540009174L20E	\$2,881
DOH/FHA	01/23/2019	693JJ21930000Z231 WV0009226	\$40,000
DOH/FHA	04/01/2019	540164004MS5E	\$9,311
DOH/FHA	09/04/2019	693JJ21930000ZS50 WV0929001	\$162,000

1. The Jefferson County Historic Landmark Commission

The Jefferson County Historic Landmark Commission has received at least three grants from the Department of the Interior, through the National Parks Service, during the time described in this section.

Jefferson County Historic Landmarks Commission DOI/NPS Federal Funding 2017 - 2019

Action Date	Award ID	Amount
04/14/2017	P17AP00098	\$44,526
08/08/2017	P17AP00011	\$956,625
03/07/2019	P19AP00006¹	\$613,930

¹ In partnership with Jefferson County Farm Land Protection Board. Fund description “To assist States and local communities acquire and preserve threatened battlefield land from the Revolutionary War, War of 1812, and Civil War.”

B. Timeliness of Complaint

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving Federal financial assistance must be filed within 180 days after the alleged discriminatory act. The Complainants assert that the most recent adverse interaction with the JCHLC and the Cemetery occurred on June 18, 2019 at the JCHLC’s bi-monthly meeting. ([Exhibit BBB](#)) According to the minutes “Mr. Koonce raised concern about the African American graveyard in Kearneysville that is adjacent to both Rockwool and pipeline construction. Mr. Burke confirmed there is nothing the JCHLC can do”.

The Complainants assert that the JCHLC should have initiated a “Council review of Section 106 Compliance” with the Advisory Council of Historic Preservation per the process described in 36 CFR § 800.9 on or after this June 18, 2019 meeting. It appears that the JCHLC has been unclear in their role concerning the Cemetery and if they should have been engaged in Section 106 clearance procedures. In the face of this uncertainty, JCHLC should have contacted the Advisory Council of Historic Preservation to initiate a compliance review. They failed to do so, thereby causing an adverse impact on the Cemetery, which may have been re-evaluated under a reopened Section 106 procedure, had the Council found the non-compliance that occurred in their Review.

The 180 day limitations period ends December 18, 2019. This complaint was sent by overnight delivery to Director, Office of Civil Rights, Department of the Interior, 1849 C Street, NW, Washington, DC, 20240 on September 23, 2019.

2. Jefferson County Office of Engineering

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving Federal financial assistance must be filed within 180 days after the alleged discriminatory act. The issuance of Mountaineer’s Registration No. WVR311281 under WV

General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities, occurred on March 29, 2019. The 180 day limitations period ends September 24, 2019. This complaint was sent by overnight delivery to U.S. EPA External Civil Rights, Compliance Office (2310A), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460 and emailed to Title_VI_Complaints@epa.gov on September 23, 2019.

3. Jefferson County Clerk

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving Federal financial assistance must be filed within 180 days after the alleged discriminatory act. The issuance of Mountaineer's Registration No. WVR311281 under WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities, occurred on March 29, 2019. The 180 day limitations period ends September 24, 2019. This complaint was sent by overnight delivery to U.S. EPA External Civil Rights Compliance Office (2310A), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460 and emailed to Title_VI_Complaints@epa.gov on September 23, 2019.

C. Discriminatory Acts

1. The Jefferson County Historic Landmarks Commission

The Jefferson County Historic Landmarks Commission (JCHLC) is an agency of the Jefferson County Commission and operates under the authority granted to landmarks commissions by the West Virginia Legislature, WV Code § 8-26A-7. The Landmarks Commission focuses on heritage education and tourism, historic preservation, and historic resource development. JCHLC's mission is to preserve historic sites, structures, and rural landscapes in the unincorporated areas of Jefferson County and educates the public about the county's heritage. Under federal regulations regarding Section 106, 36 CFR § 800.2(3)(c), JCHLC is considered a "Consulting Party - Local Government Representative" and allowed to serve as a substitute for public involvement in the Section 106 process.

a. The Jefferson County Historic Landmark Commission failed to respond to a WVSHPO solicitation for Section 106 Public Comment regarding the Rockwool project, thereby denying the public the opportunity to participate in the Section 106 procedure.

Regardless that the City of Ranson should have been contacted to provide public comment for the area within their jurisdiction, there was no reply or public comment from the agency that was solicited for comment, JCHLC. This violates 36 CFR § 800.2(d)(2)(2) which requires that the public be informed about an undertaking and its effects on historic properties. “The agency official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input.”

In WVSHPO’s April 3, 2017 reply letter ([Exhibit Y](#)) to ERM, Inc. which initiates the Section 106 Process, special mention is made that Federal regulations require public comment. WVSHPO also requires that ERM, Inc. specifically contact the Jefferson County Historic Landmark Commission (JCHLC) and request comment on the project. In this letter, the Cemetery (WVSHPO ID# 46JF507) is specifically mentioned as a potential historic place that requires evaluation for inclusion on NRHP.

A July 24, 2017 reply letter ([Exhibit DD](#)) to WVSHPO from Paige Gardner of The Thrasher Group, Inc. (A sub-consultant hired to perform the Phase 1 Archaeological Survey), supplies a copy of the letter sent on June 5, 2017 ([Exhibit EE](#)) to JCHLC requesting public comment. There are three NRHP properties that are listed on this letter, but the Cemetery is NOT listed nor is its ID number given. It is impossible to know if the Cemetery was purposely excluded from this letter, however, its exclusion certainly would have made evaluation of the Cemetery by the JCHLC unlikely.

Ms. Gardner reports that she received no comments or communications in response from JCHLC within 30 days. It appears that no other attempts were made to contact the JCHLC regarding this project. In the digital era we live in, it must be asked why contact via e-mail or telephone was not attempted. Both an email address (landmarkscommission@jeffersoncountywv.org) and a telephone number (304-728-3195) are

listed on the JCHLC website. Why didn't Ms. Gardner try to make contact through another method?

Regardless of the reason, the result was that no public comments were received from JCHLC. It appears that WVSHPO accepts this singular contact attempt as satisfying the requirement for public comment as they made no response to the July 24th letter. It appears that no other attempts were made to alert the public at large to the Section 106 review underway. Had any attempt been made to alert the public through usual means, i.e. Legal Notice in the local paper of record (The Spirit of Jefferson), it is likely that members of the community and descendants would have responded.

Furthermore, there is no proof provided that the June 5th letter was in fact received by JCHLC. There is no delivery confirmation receipt or evidence of a postmarked envelope included with the July 24th letter. A review of JCHLC's meeting minutes from the past several years reveals that projects under Section 106 review are discussed and evaluated during the JCHLC's bimonthly meetings. There is no mention in the July 12, 2017 meeting minutes of the June 5th letter or the Section 106 process for Project FR# 17-437-JF, AKA "Project Shuttle" ([Exhibit FF](#)). The first time the Rockwool/Roxul project is discussed by JCHLC occurs on December, 18 2017 in which JCHLC member Ben Horter reports that "They are already moving dirt. Their 106 was approved". ([Exhibit GG](#)) To be clear, the Section 106 process was not closed until 7 months later in late June 2018.

The Cemetery was disparately impacted by the lack of public comment in that the local community, and even those historically-minded individuals on the JCHLC, were unaware of the imminent threat of development until construction had already begun. Had the public been alerted in advance, descendants and concerned citizens would have had the opportunity to voice opposition to the project and possibly been able to uncover the historic importance of the land parcel and Cemetery in particular.

b. JCHLC incorrectly assumed that the Rockwool project was not in their purview, when in fact three nearby NRHP listed properties and the Cemetery are located in the Middleway District of Jefferson County. JCHLC was directly asked to comment on the three listed NRHP properties, and should have been asked for a comment on the Cemetery, which still required a determination of eligibility for inclusion on NRHP.

There appears to be confusion over what government entity has authority to make public comments for this project. The entirety of the Rockwool project is contained in the Jurisdiction of Ranson, not the Middleway District of Jefferson County as was put forth by ERM, Inc. when the Section 106 process was initiated and continued to be incorrectly located in Middleway in subsequent communications and reports. The request for Section 106 public comments should have been sent to Ranson City Council in addition to the JCHLC, which had jurisdiction over three nearby NRHP properties and the Cemetery.

In the JCHLC October 10, 2018 meeting minutes ([Exhibit CC](#)), “[REDACTED] suggested the HLC membership, as County Commission appointed agents, are able to request any documents necessary to make an informed decision relating to their decision-making processes.” “Mr. Burke responded to [REDACTED] and indicated the property [Rockwool] is within a municipal boundary [Ranson, WV] and, thus, not under the jurisdiction of the HLC.” The suggestion is made that “Once Rockwool chose Ranson instead of the county property, the county commission took no further part [in the process].”

It is fair to assume that Ranson is responsible for monitoring historic places within its jurisdiction. Under the Section 106 regulations, 36 CFR § 800.2(c)(3) - Participants in the Section 106 process: “Under other provisions of Federal law, the local government may be authorized to act as the agency official for purposes of section 106.” However, Ranson does not have a committee or council dedicated to historic landmarks in its jurisdiction. In this case, the Section 106 request for public comment for the Rockwool project, should have been addressed to the City Council of Ranson. Rockwool had been working intimately with the City of Ranson and knew well that their property was located in Ranson, why was this error not addressed by Rockwool or its contractors?

Since JCHLC denies responsibility for evaluating this particular property, and the municipality in which the property is located does not have an established entity to provide comments on historic places, and no effort was made by WVSHPO or ERM, Inc. to contact Ranson, then it is logical to conclude that the Section 106 requirement for public comment was not met.

c. The December 2017 Meeting should have triggered the JCHLC to initiate a “Council review of Section 106 Compliance” with the Advisory Council of Historic Preservation per the process described in 36 CFR § 800.9.

Regardless of the jurisdiction confusion regarding the Rockwool property, which is indeed located in Ranson WV, the Cemetery is located in the Middleway District of Jefferson County, and falls within the purview of the JCHLC. The JCHLC neglected their responsibility to evaluate the Cemetery when they incorrectly assumed that none of the aspects of this project were within their authority to evaluate. In fact, the first mention of this project is at the December 13, 2017 ([Exhibit GG](#)) meeting. At this meeting, JCHLC member Ben Horter reports “Roxul is building a rock wool insulation factory in the Bardane area. Horter attended a breakfast meeting at Hollywood Casino. They are already moving dirt. Their 106 was approved. This is part of the National Preservation Act - any federal undertaking must comply and take into account potential damage to historic resources.” It is unclear why the JCHLC does not take the initiative here to understand how the Section 106 could have been approved without their input, and failed to initiate a “Council review of Section 106 Compliance” with the Advisory Council of Historic Preservation per the process described in 36 CFR § 800.9, to ensure compliance with Section 106 regulations.

The next mention of Rockwool is on August 8, 2018 ([Exhibit CCC](#)). At this meeting, the Committee discusses the Rockwool project’s potential impact on nearby historic properties and votes to send a letter in opposition of the construction. At the following meeting on October 10, 2018 ([Exhibit DDD](#)) five local citizens spoke against the project and the Committee voted to send an opposition resolution to a number of local government bodies. How can WVSHPO accept that the public comment requirement has been satisfied if the singular entity allegedly

contacted for public comment appeared to have no knowledge of the project until a full year later?

This position is inconsistent with the way in which other Section 106 proceedings were handled according to JCHLC meeting minutes. There are numerous examples of JCHLC providing feedback and comments on projects located within city limits. JCHLC even has a “Courthouse Committee”, a committee dedicated to matters relating to the Charles Town Courthouse, which is in the jurisdiction of Charles Town, WV. ([Exhibit EEE](#)) How could JCHLC claim they do not have the authority to proceed? Why did JCHLC absolve themselves of responsibility for this project? Clearly, there is a need to clarify Section 106 protocol at JCHLC to prevent projects and properties from slipping through the cracks again.

This proceeding reveals a large hole in the Section 106 process as it operates in Jefferson County. The recent annexation of parts of Jefferson County by Ranson has created a patchwork of jurisdictions that seems to be unclear even to local officials. The unclear nature of who would have been responsible for providing Section 106 public comments for the entirety of the Rockwool project, which was wholly contained in Ranson but surrounded by County land that hosts three NRHP listed properties and the Cemetery, should be resolved and clarified with all potential participants in the Section 106 process. This confusion, brought on by the incorrect location of the Rockwool facility in the Middleway District and the cross-jurisdictional nature of the Section 106, is no excuse for the fact that the public was not given an opportunity to participate in this Section 106 process.

Complainants argue that the first harms due to inaction caused by JCHLC in 2017 through today’s date have caused an adverse domino effect and “fruit from the poisonous tree” that allowed other government agencies, such as WVDEP and WVDOT, to proceed with approving permits even though the Section 106 procedure had not been completed, which led to irreparable harm to the Cemetery, its burials, its descendants, the archaeological significance, and African American culture and heritage.

2. Jefferson County Office of Engineering

The Jefferson County Office of Engineering is a department of the Jefferson County Commission.

The duties of the Jefferson County Office of Engineering are:

“The Office of Engineering is responsible for the engineering review of both residential and commercial subdivision plats and commercial/industrial site plans for compliance with the Subdivision Ordinance, Floodplain Ordinance, and the Improvement Location Permit Ordinance. This is done in conjunction with the Office of Planning & Zoning’s review with the Subdivision and Zoning Regulations.”³⁵

The Complainants find several erroneous facts to Mountaineer Gas’ recorded easement recorded on April 19, 2019. As described in subsection “[i. Property ownership discrepancies](#)” of section “IV. RECIPIENT: WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION ”incorrect maps were submitted by Mountaineer Gas. One version was submitted to WVDEP and another version was recorded in the Jefferson County Clerk’s Office .

Both map versions are incorrect and if either of these maps and the gas pipeline project was reviewed properly by the Jefferson County Office of Engineering, surely these inconsistencies would have been identified. The majority of the gas pipeline falls within County’s jurisdiction (Middleway District) and a small portion in Ranson jurisdiction. If it is not the Jefferson County Office of Engineering’s responsibility to review and oversee projects that disturb land within their jurisdiction, then whose responsibility is it? We are unsure if their actions or inactions were a failure of Ranson to communicate with their office or dereliction of their duties. Many disparate impact situations occur because government agencies either fail to follow their own policies and procedures or there are not proper policies and procedures in place to follow. Whatever the failure was between Ranson and the Jefferson County Office of Engineering, property that belonged to the A.M.E. Church was usurped and destroyed along with possible graves and any archaeological findings thereby destroying African American heritage, history, and culture.

³⁵ <http://www.jeffersoncountywv.org/county-government/departments/engineering-department>

3. Jefferson County Clerk

The Jefferson County Clerk's office maintains birth, marriage and death records, records documents, and keeps the minutes of the Jefferson County Commissioners.

The Jefferson County Clerk's Mission Statement: "To protect, preserve and maintain the public records, as well as the election process, with integrity and accountability; to support the Constitution of the United States and the Constitution of West Virginia while providing the utmost accurate and professional service to our customers and colleagues."³⁶

From Jefferson County Clerk's document requirements to record deeds:

Deeds (this includes all deed types)

- Completed Sales Listing Form (a printable version of this form is above for your convenience)
- Grantor's signature
- Legal description of the property including district
- An "And Being" paragraph (This is information on the previous owner which includes: name, date, deed book number and page number. This information is necessary in order to follow chain of title.)
- Declaration of Consideration of Value (This is the monetary amount for which the property is sold. If the property is being transferred without monetary value, it must state in the declaration paragraph 'why' it is exempt from transfer tax.)

The Complainants find several erroneous facts in Mountaineer Gas' easement agreement recorded in the Jefferson County Clerk's office on April 19, 2019. As described in subsection "[i. Property ownership discrepancies](#)" of section "IV. RECIPIENT: WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION" incorrect maps were submitted by Mountaineer Gas. One version was submitted to WVDEP and another version was recorded in the Jefferson County Clerk's Office. Both map versions are incorrect and if the Jefferson County Clerk's office reviewed the easement agreement for accuracy of deed title chain and legal descriptions, surely these inconsistencies would have been identified.

³⁶ <http://www.jeffersoncountywv.org/county-government/elected-officials/county-clerk>

The Jefferson County Clerk's mission statement includes "To protect, preserve and maintain the public records", surely that would include a procedure to verify said records are accurate. The Complainants argue that if procedures were either followed or in place to verify the recorded easement for accurate property ownership, then the discovery of the A.M.E. Church's legal ownership to the property would have been revealed. As stated in the Jefferson County Office of Engineering's section above, failure for government agencies to follow their own policies and procedures or if there are not proper policies and procedures in place to follow, result in disparate impact cases. The Jefferson County Clerk's failure to follow procedures or have established procedures has resulted in the possible disturbance or removal of burials at the A.M.E. Church as well as destroying the archaeological integrity of the area. Destruction to African American culture, history, and heritage has occurred.

D. Request

Based upon the foregoing, Complainants request that the DOI accept this complaint and conduct an investigation to determine whether JCHLC violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, 36 CFR Part 800 and 40 C.F.R. Part 7. If a violation is found and JCHLC is unable to demonstrate a substantial, legitimate justification for its action and to voluntarily implement a less discriminatory alternative that is practicable, Complainants further petition the DOI to initiate proceedings to deny, annul, suspend, or terminate DOI financial assistance to JCHLC.

The Complainants request that a "Council review of Section 106 Compliance" be initiated per the process described in 36 CFR § 800.9, to evaluate three issues 1) Was the Section 106 process satisfactorily completed and compliant 2) Was JCHLC's role or lack thereof was appropriate 3) Was the public comment requirement satisfied if JCHLC made no comment and no other entities or the public were alerted.

2. Jefferson County Office of Engineering

Based upon the foregoing, Complainants request that the U.S. Environmental Protection Agency - Office of Civil Rights accept this complaint and conduct an investigation to determine

whether the Jefferson County Office of Engineering, a department of Jefferson County Commission, violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and 40 C.F.R. Part 7 for failure to review Mountaineer Gas' pipeline construction route (approved by WVDEP on March 29, 2019, Mountaineer's Registration No. WVR311281 under WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities), to ensure accuracy of land records. If a violation is found and the Jefferson County Office of Engineering is unable to demonstrate a substantial, legitimate justification for its action and to voluntarily implement a less discriminatory alternative that is practicable, Complainants further petition the EPA to initiate proceedings to deny, annul, suspend, or terminate EPA financial assistance to Jefferson County Commission and their departments and agencies, and after the conclusion of those proceedings, deny, annul, or terminate EPA financial assistance to Jefferson County Commission and their departments and agencies.

3. Jefferson County Clerk

Based upon the foregoing, Complainants request that the U.S. Environmental Protection Agency - Office of Civil Rights accept this complaint and conduct an investigation to determine whether the Jefferson County Clerk, a department of Jefferson County Commission, violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and 40 C.F.R. Part 7 for failure to review Mountaineer Gas' pipeline construction route (approved by WVDEP on March 29, 2019, Mountaineer's Registration No. WVR311281 under WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities), to ensure accuracy of land records. If a violation is found and the Jefferson County Clerk is unable to demonstrate a substantial, legitimate justification for its action and to voluntarily implement a less discriminatory alternative that is practicable, Complainants further petition the EPA to initiate proceedings to deny, annul, suspend, or terminate EPA financial assistance to Jefferson County Commission and their departments and agencies, and after the conclusion of those proceedings, deny, annul, or terminate EPA financial assistance to Jefferson County Commission and their departments and agencies.

X. CONCLUSION

The Respondents' failure to follow policies and procedures or have established policies and procedures to protect against discrimination and disparate impact, have allowed the Rockwool and Mountaineer Gas construction activities to cause irreparable harm to the Cemetery; its descendants; African American culture, heritage, and history by destroying archaeological settings and significance of these burial grounds.

It is unclear to the Complainants whether the harms described herein are either a case of government collusion or complete State and local government breakdown. Whether the situations described are the results of collusion, dereliction of duties, or not having established policies and procedures to protect against discrimination and disparate impact events, proper archaeological assessments were not performed for the Cemetery and the A.M.E Church and the Section 106 of the National Historic Preservation Act (NHPA) was not completed.

Complainants argue that the Respondents' actions and inactions have caused disparate impacts. The first harms of WVSHPO and JCHLC in 2017 to present to not adequately review the Cemetery for historical context and protection caused an adverse domino effect and a "fruit from the poisonous tree" scenario that allowed other government agencies, such as WVDEP and WVDOT, to proceed with approving permits. This led to irreparable harm to the Cemetery and its burials, archaeological significance, and African American culture and heritage. As outlined in "Section VII: Proving Discrimination – Disparate Impact" of the *Title VI Legal Manual*:³⁷

"Finally, the importance of identifying a specific practice does not necessarily mean that practice must be affirmatively undertaken; sometimes the relevant policy or practice could be the failure to do something, or even the failure to have a policy. In other words, inaction can exert a disproportionate adverse effect."

The Respondents, being Federally funded entities, must make every effort to abide by all laws of the Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] and must have the awareness, skills, and training to respect and protect all aspects of a culture's heritage, history, and traditions.

³⁷ <https://www.justice.gov/crt/fcs/T6Manual7>

As described in the African American Burial Grounds Network Act, African American burial grounds and other cultural areas should receive special protections due to the many atrocities that have been committed to their ancestors. We can not let any parts of African American history, culture, and heritage be erased for any reason; especially not to be sacrificed for perceived state/local economic development and individual and/or corporate benefits.

XI. REQUEST

For the reasons stated herein, Complainants respectfully request that

a. The United States National Park Service, Department Of The Interior find the West Virginia State Historic Preservation Office and its sub-agencies in violation of Title VI of the Civil Rights Act of 1964; and

b. The United States Environmental Protection Agency find the West Virginia Department of Environmental Protection and its sub-agencies in violation of Title VI of the Civil Rights Act of 1964; and

c. The United States Department of Transportation and the Federal Highway Administration the West Virginia Department of Transportation and its sub-agencies in violation of Title VI of the Civil Rights Act of 1964; and

Pursuant to the Title VI of the Civil Rights Act, the Complainants seek an immediate injunction and stop work order to be issued by the State of West Virginia and the Respondents to all Rockwool and Mountaineer Gas construction and operating activities to prevent further damage to the Cemetery, its descendants, and African American history and culture until the discriminatory grievances contained herein can be resolved.

XI. COMPLAINANTS' SIGNATURES

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

Signature: _____

Date: 9/21/19

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy
Boyd Carter Memorial Cemetery Descendant

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy
Winchester, VA 22601

Signature: _____

Date: 9/21/19

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy
Boyd Carter Memorial Cemetery Descendant

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy
Charles Town, WV 25414

Signature: _____

Date: 9/23/19

Jennifer King, Chair
Rural Agricultural Defenders
PO Box 445
Kearneysville, WV 25430
304-283-0032

Signature: _____

Date: 9/23/2019

Giuliana Brogna, Treasurer
Rural Agricultural Defenders
PO Box 445
Kearneysville, WV 25430
401-855-1037

Signature: _____

Date: 9/22/19

Susan April, Environmental Specialist
Rural Agricultural Defenders
PO Box 445
Kearneysville, WV 25430
240-675-2385

XIII. EXHIBITS - ATTACHED

EXHIBIT A - BOYD CARTER MEMORIAL CEMETERY & POSSIBLE A.M.E
CHURCH BURIALS, PAGE 1

08162013

Boyd Carter Memorial Cemetery & Possible A.M.E Church Burials

Confirmed Burials in Boyd Carter Memorial Cemetery

Burials	Birth Date	Death Date	Age at Death	Race	Death Certificate	Olive Sostice
(b) (6) Privacy, (b) (7)(C) Enforcement Privacy						

Page 1 of 1

**EXHIBIT A - BOYD CARTER MEMORIAL CEMETERY & POSSIBLE A.M.E
CHURCH BURIALS, PAGE 2**

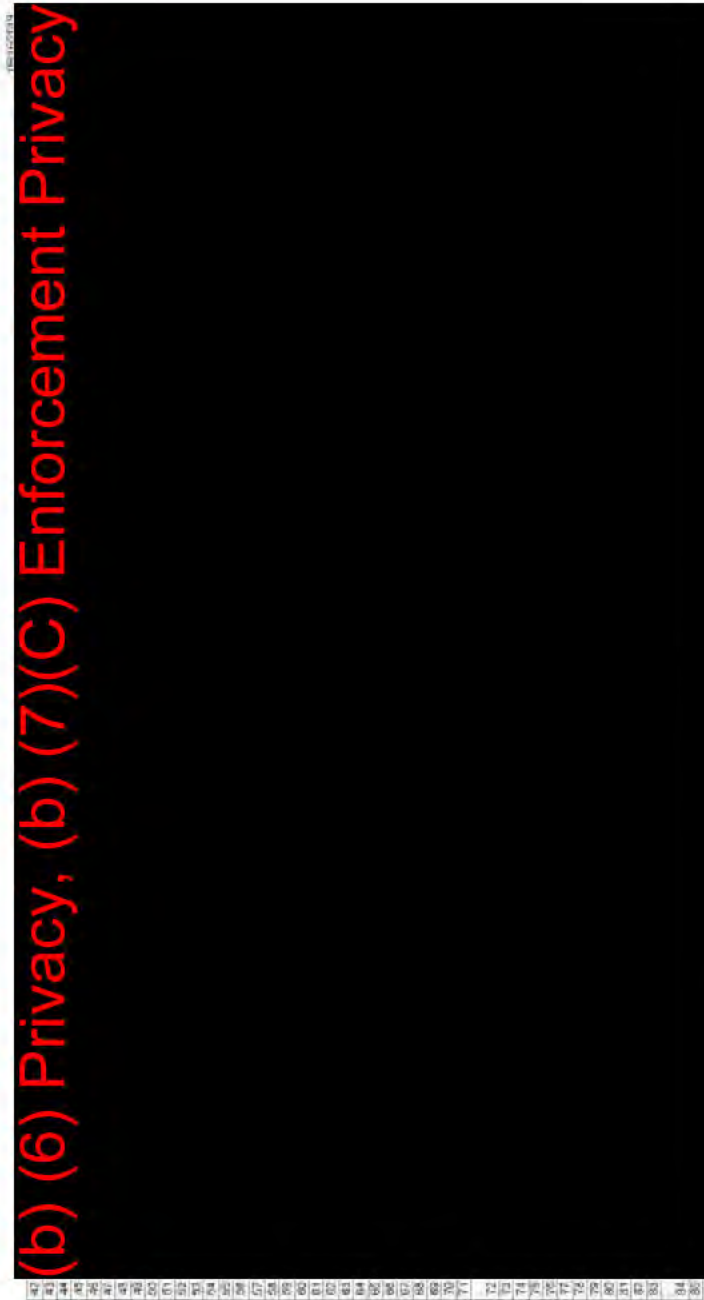


EXHIBIT A - BOYD CARTER MEMORIAL CEMETERY & POSSIBLE A.M.E
CHURCH BURIALS, PAGE 3

08/16/2019

Possible Burials in Boyd Carter Memorial Cemetery & A.M.E Church (see source from Death Certificate)					Death Certificate Source
Burials	Birth Date	Death Date	Age at Death	Race	
(b) (6) Privacy, (b) (7)(C) Enforcement Privacy					

Page 3 of 4

**EXHIBIT A - BOYD CARTER MEMORIAL CEMETERY & POSSIBLE A.M.E
CHURCH BURIALS, PAGE 4**

06/16/2019

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

Page 4 of 4

EXHIBIT B - THE 1902 CEMETERY DEED

Standard Lime & Stone Co.

To: Deed of Bargain and Sale.

Trustees: "Burying Ground"

This Deed made this 31st day of December 1902 between the Standard Lime and Stone Company, a corporation of W. Va., having an office at Baltimore, Maryland of the first part and (b) (6) Privacy, (b) (7)(C) Enforcement Privacy and (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Trustees, all of Jefferson County West Virginia.

Witnesseth:- that for and in consideration of the sum of One Dollar (\$1.00) cash in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, the parties of the first part do grant and convey with covenants of general warranty unto the said Trustees all of their right, title, interest to, and in the following described tract of land situated about 1 mile South East of Kearneysville, Jefferson County, West Virginia.



Beginning at a stake (fig 1); thence S 60-15E at 12 ft. passing through a stone corner to (b) (6) Privacy, (b) (7)(C) Enforcement Privacy in all 14.9 poles to a stone (b) (6) Privacy, (b) (7)(C) Enforcement Privacy corner (fig 2); thence N 6-0E 5.1 pole to a stake now made a corner (fig 3); thence N 60-15 W 12.45 poles to a stake corner to (b) (6) Privacy, (b) (7)(C) Enforcement Privacy; thence S 34-40W

4.58 poles to the beginning containing one rood twenty two and four tenths perches (22.48).

The said lot of ground conveyed to the aforesaid Trustees to be used as a burying ground for colored people and for no other purpose.

To have and to hold the said lot herein conveyed with all rights privileges and appurtenances thereunto belonging including a right to use a road, for ingress or egress to said burying ground, and used by (b) (6) Privacy, (b) (7)(C) Enforcement Privacy through the lands of the Standard Lime & Stone Company unto the said Trustees or their successors forever.

Witness the following signatures and seals.

The Standard Lime & Stone Co., (Seal)

by Daniel Baker (Seal)

President.

State of Maryland,

Baltimore City SS.

I, hereby certify that on this 10th day of January A. D. 1903, before the subscriber a Notary Public of the State of Maryland personally appeared Daniel Baker President of the Standard Lime & Stone Co. and did acknowledge the foregoing deed to be his act.

Witness my hand and Notarial Seal.

State of West Va.,

County of Jefferson SS.

In the Clerk's Office of County Court, Sept, 14th, 1906.

This Deed of Bargain and Sale, dated Dec. 31st 1902 from Standard Lime & Stone Co. to Test:

EXHIBIT C - (b) (6) Privacy, (b) (7)(C) Enforcement Privacy DEED (DEED BOOK 263 PAGE 273) PAGE 2 OF DEED

274

said Lane S 78° 30' E - 392.0 feet, thence crossing the said (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Lane N 31° 08' E - 24.15 feet to a corner in the southern line of the Cemetery Lot, thence with the three following lines of the said Lot N. 60° 30' W - 12.0 feet, thence N 34° 40' E - 75.57 feet, thence S 60° 30' E - 205.43 feet to a corner in the western line of the (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Farm, thence with the said line N. 8° 59' 20" E. - 437.77 feet to the beginning.

THIS CONVEYANCE IS MADE SUBJECT TO SUCH rights of burial as may exist (it being understood that there may be certain bodies buried in the portion of the land herein described near to and along the northeast line of the old cemetery and the northwest line of the old cemetery).

A plat of the (b) (6) Privacy, (b) (7)(C) Enforcement Privacy calculation is hereby attached and made a part hereof.
DECLARATION OF CONSIDERATION OR VALUE

Under penalties of fine and imprisonment as provided by law, the undersigned (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Special Commissioner, who resides on (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Charles Town, Jefferson County, West Virginia, being one of the grantors in this deed and a responsible party familiar with the transaction herein involved, by his signature to this deed does hereby declare that the total consideration paid and secured to be paid for the property conveyed by the document of which this declaration is a part is One Thousand Dollars (\$1,000.00) and that 100 per cent of the real estate herein conveyed is situate in the State of West Virginia

WITNESS the following signatures and seals.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy (SEAL)
Special Commissioner
(b) (6) Privacy, (b) (7)(C) Enforcement Privacy (SEAL)
Special Commissioner

Documentary stamp \$1.10 affixed.
N.Ya Transfer stamps \$2 20 affixed, 11/7/63.

STATE OF WEST VIRGINIA,
COUNTY OF JEFFERSON, TO-WIT

I, J. J. Strider, a Notary Public of and for said County and State do hereby certify that (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Special Commissioner, whose name is signed to the foregoing deed bearing date the 5th day of Nov., 1963, has this day acknowledged the same before me in my said County.

Given under my hand this 7th day of Nov, 1963

J. J. Strider, Notary Public

My Commission Expires:
Jan 25 1966

STATE OF WEST VIRGINIA
COUNTY OF BERKELEY, TO-WIT

I, John W. Small, Jr., a Notary Public of and for said County and State do hereby certify that (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Special Commissioner, whose name is signed to the foregoing deed, bearing date the 5th day of November, 1963, has this day acknowledged the same before me in my said County.

Given under my hand this 3 day of November, 1963.

John W. Small, Jr.,
Notary Public

My Commission Expires:
Feb. 25, 1973.

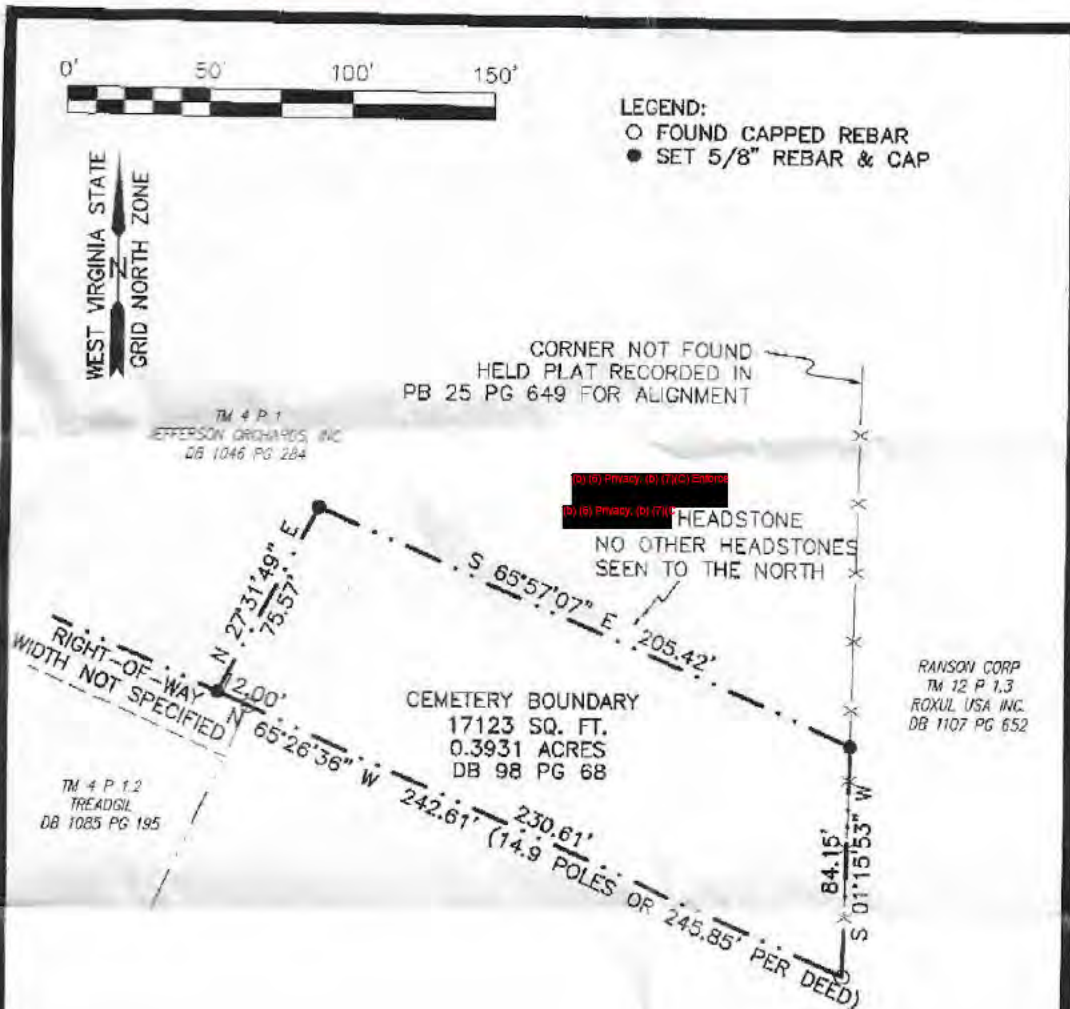
EXHIBIT D - 05/02/19 CEMETERY SURVEY

05/02/2019 09:15

(b) (6) Privacy, (b) (7)(C) Enforced Privacy

(b) (6) Privacy, (b) (7)(C) Enforced Privacy

PAGE 01/01



PLAT OF RESURVEY
THE PROPERTY OF
TRUSTEES "BURYING GROUND"
DEED BOOK 98 PAGE 68
TAX MAP 4 PARCEL UNSPECIFIED
MIDDLEWAY DISTRICT

EXHIBIT E - GROUND PENETRATING RADAR RESULTS

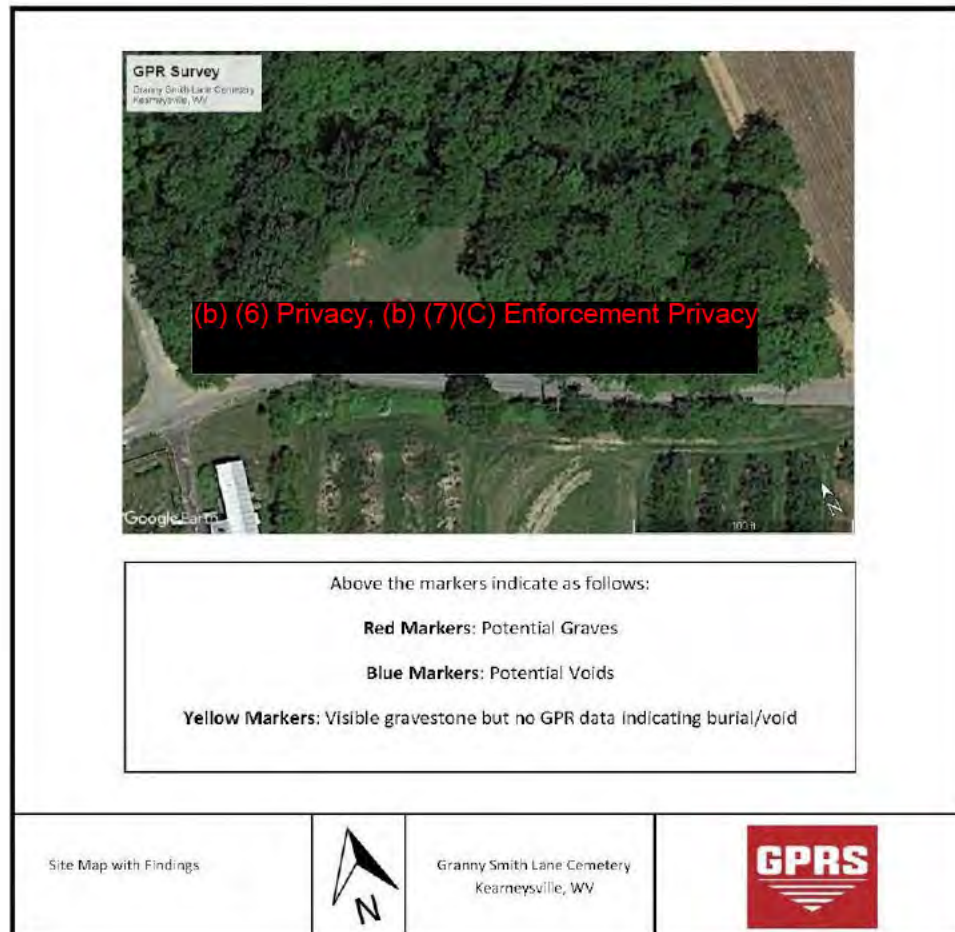


EXHIBIT F - GROUND PENETRATING RADAR RESULTS - GRAVES NEAR ROAD



EXHIBIT G - BURIAL PLOTTING

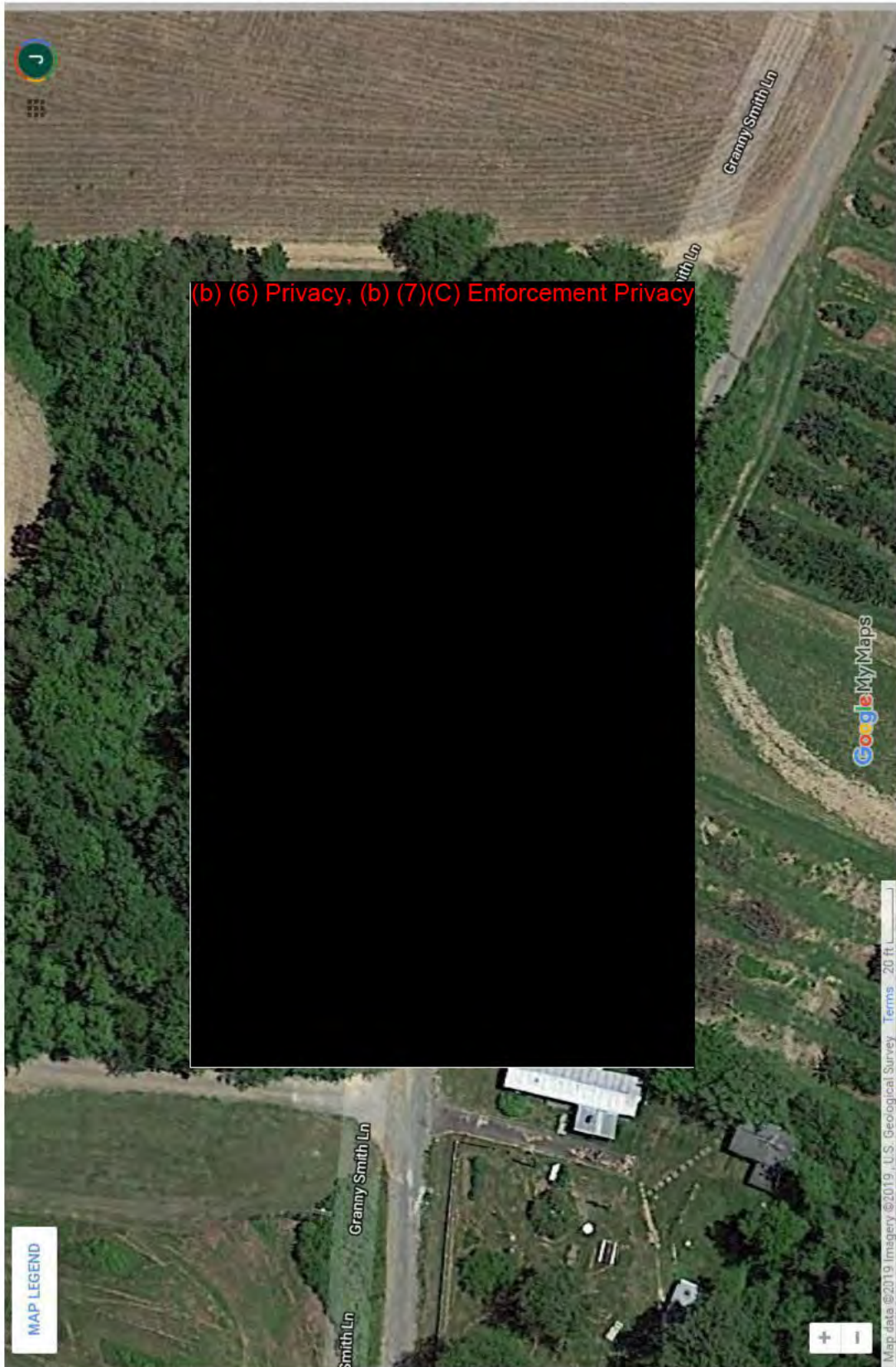


EXHIBIT H - 1966 JEFFERSON ORCHARDS' DEED, DANDRIDGE OWNERSHIP

129.

460

2772

(b) (5) Privacy, (b) (7)(C) Enforcement Privacy

To: DEED OF B. & S.
Jefferson Orchards, Inc.

THIS DEED made and executed this 1st day of December, 1966, by and between (b) (5) Privacy, (b) (7)(C) Enforcement Privacy parties of the first part, and Jefferson Orchards, Inc., a West Virginia corporation, party of the second part:

WITNESSETH, That for and in consideration of the sum of \$5.00, cash in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties of the first part do hereby grant, bargain, sell and convey and by these presents, have granted, bargained, sold and conveyed, to and unto the party of the second part, with general warranty, the following described real estate, situate in Middleway District of Jefferson County, West Virginia, more particularly described as follows:

"All those certain tracts or parcels of land situate in Middleway District, Jefferson County, West Virginia, together with all improvements thereon and appurtenances belonging thereto, described as follows:

FIRST PARCEL

Those three several tracts of land, which were heretofore conveyed to (b) (5) Privacy, (b) (7)(C) Enforcement Privacy by (b) (5) Privacy, (b) (7)(C) Enforcement Privacy Trustees, by deed dated February 16, 1876, and recorded in the Office of the Clerk of the County Court of Jefferson County, West Virginia, in Deed Book D, page 104, containing in the aggregate about 208 acres, 2 roods and 30 perches, and described as follows:

TRACT NO. 1:

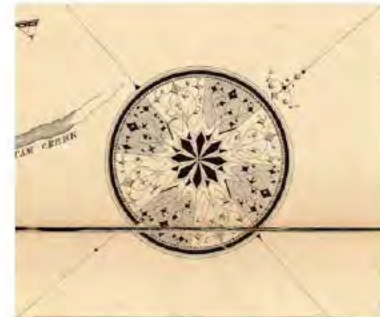
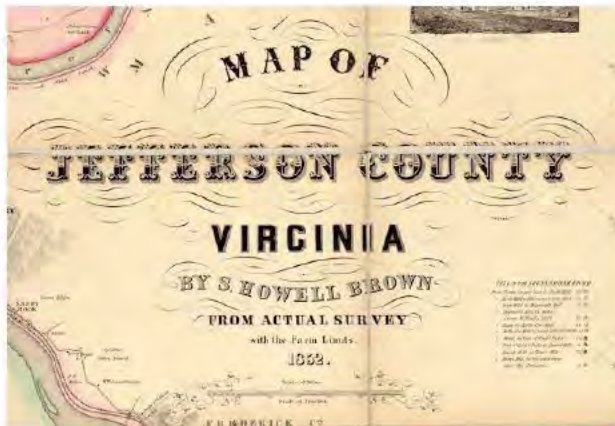
Beginning at a stone in the edge of (b) (5) Privacy, (b) (7)(C) Enforcement Privacy field about 1 pole from the fence in the line of (b) (5) Privacy, (b) (7)(C) Enforcement Privacy Patent, now (b) (5) Privacy, (b) (7)(C) Enforcement Privacy thence with the line of said Patent, now (b) (5) Privacy, (b) (7)(C) Enforcement Privacy S. 64° 40' E. 216.7 poles to a stone set in the ground in the line of said Patent, now (b) (5) Privacy, (b) (7)(C) Enforcement Privacy corner to (b) (5) Privacy, (b) (7)(C) Enforcement Privacy about 2 poles to (b) (5) Privacy, (b) (7)(C) Enforcement Privacy field; thence with the line of (b) (5) Privacy, (b) (7)(C) Enforcement Privacy S. 4° 3/4' E. 142 poles to a stone set in the ground in the line of (b) (5) Privacy, (b) (7)(C) Enforcement Privacy now made corner to the heirs of A. S. Dandridge; thence, leaving Mrs. (b) (5) Privacy and running the division line, N. 64° 3/4' W. 165.7 poles to a stone standing nearly in the center between sundry marked white oaks; thence S. 25° 1/4' W. 133.5 poles to the beginning; containing 160 acres.

TRACT NO. 2:

Beginning at a stone in the line of (b) (5) Privacy, (b) (7)(C) Enforcement Privacy deceased, and corner to (b) (5) Privacy, (b) (7)(C) Enforcement Privacy

EXHIBIT I - 1852 S. HOWELL BROWN MAP OF JEFFERSON COUNTY, WV
CLOSEUP SHOWING DANDRIDGE LAND OWNERSHIP & CEMETERY

Jefferson County, WV 1852 Map Closeups



COMPASS

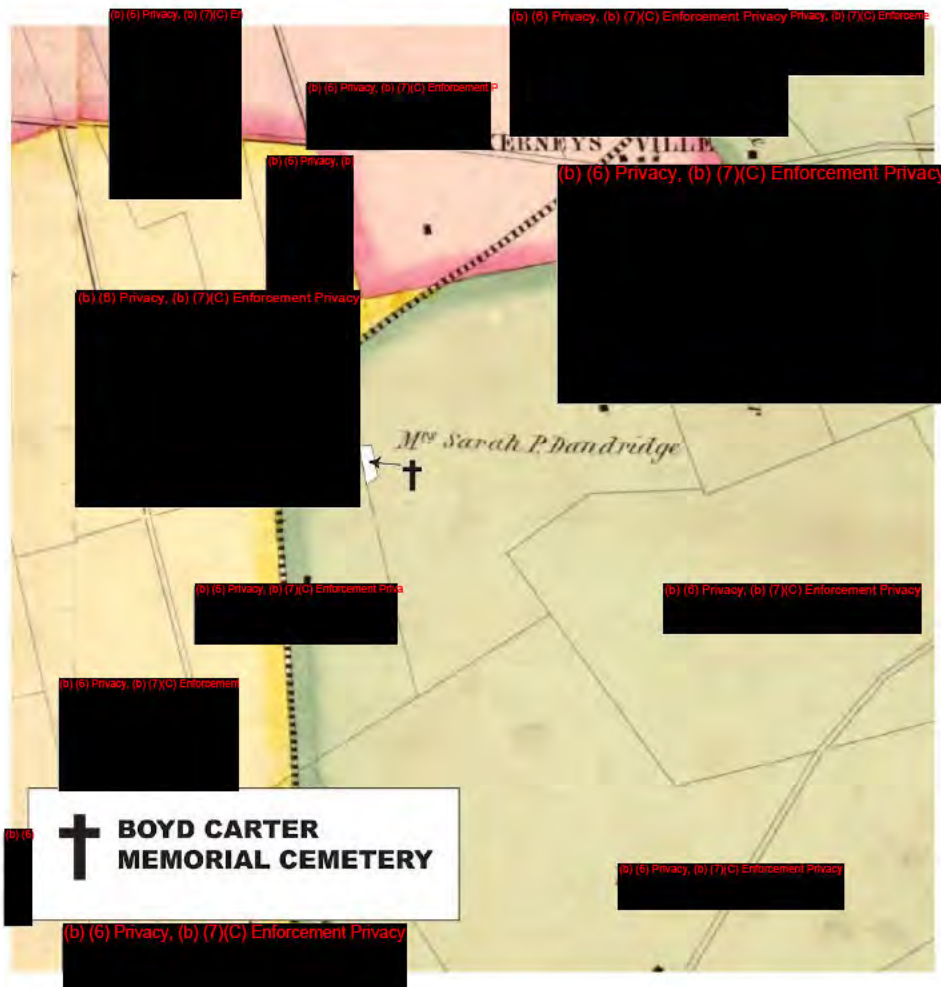


EXHIBIT J - JEFFERSON COUNTY WV TAX MAP OVERLAY WITH 1852 MAP

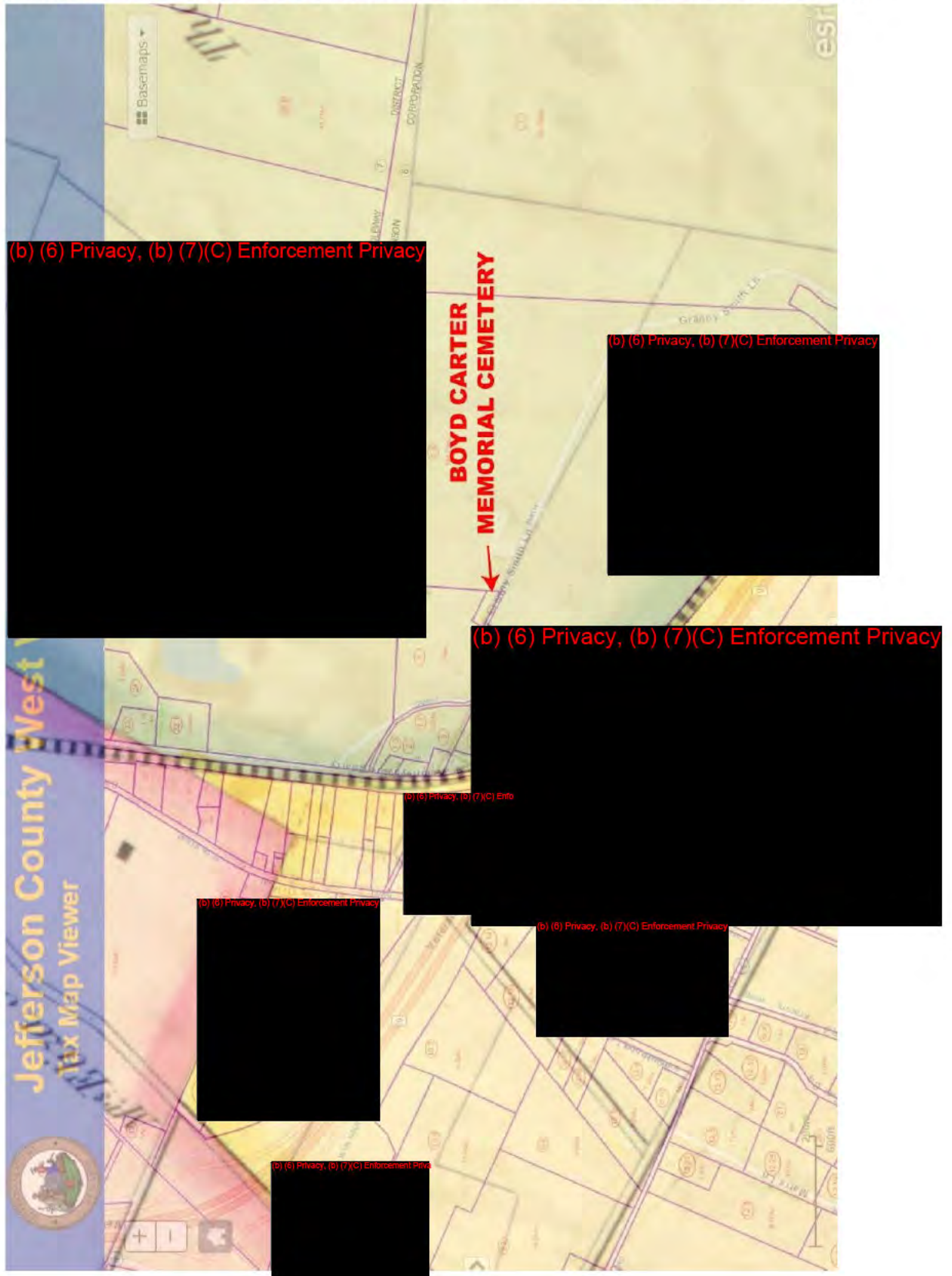


EXHIBIT K - WEST VIRGINIA GEOHISTORY / GEO-EXPLORER PROJECT:
JEFFERSON COUNTY LAND GRANTS SHOWING [REDACTED] OWNERSHIP OF
CEMETERY IN 1763

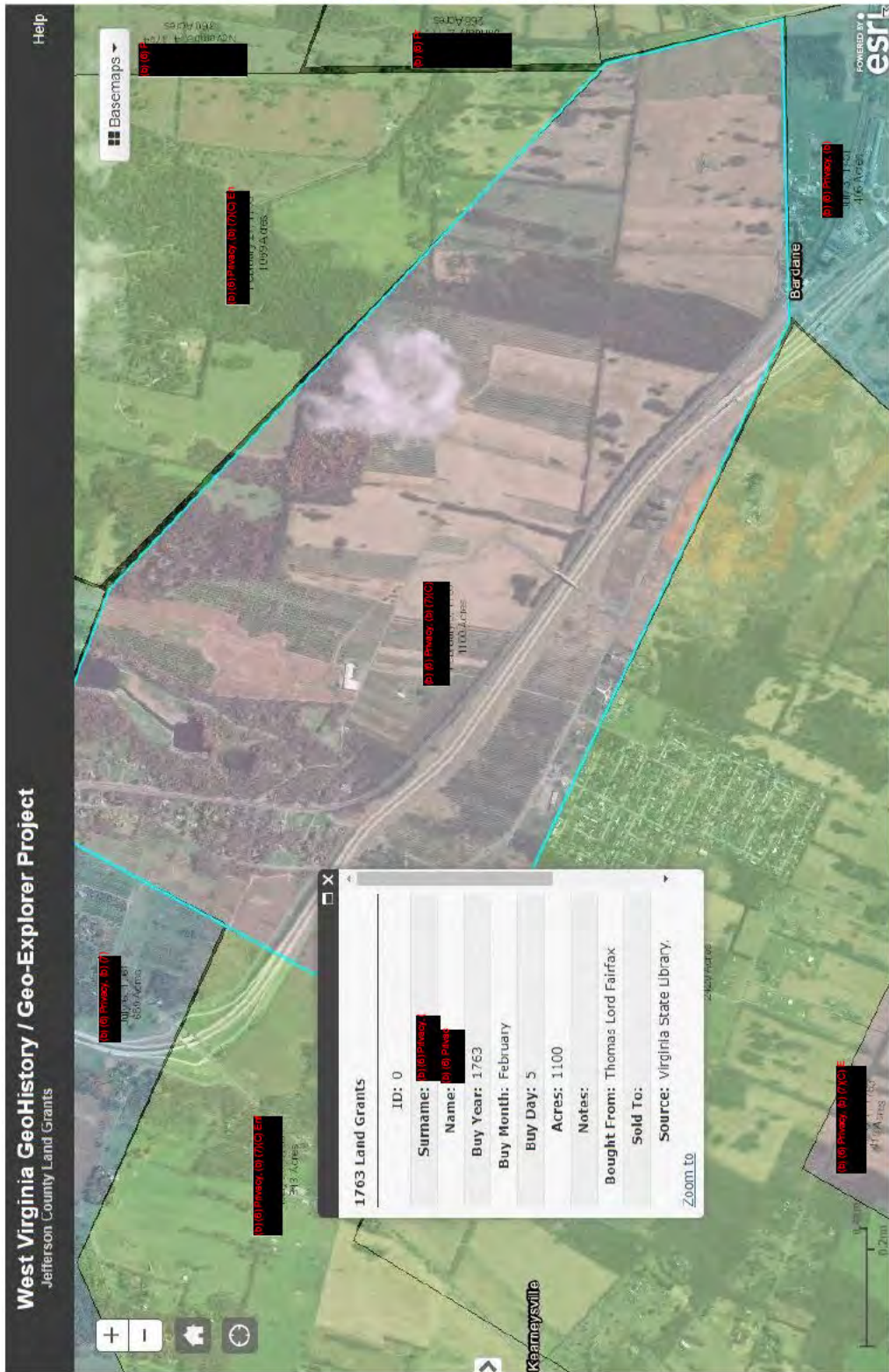
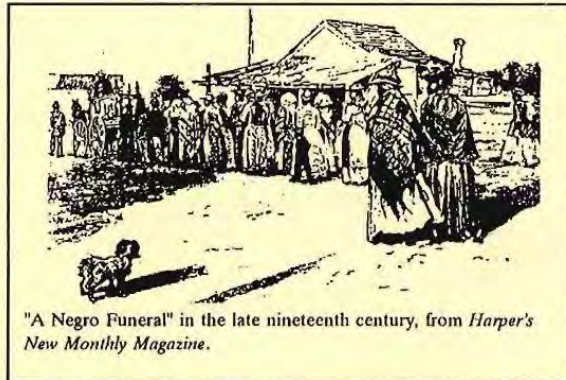


EXHIBIT L - "GRAVE MATTERS: THE PRESERVATION OF AFRICAN AMERICAN CEMETERIES" BY THE CHICORA FOUNDATION, PAGE 4



place at night, possibly to allow slaves from neighboring plantations to attend, but just as likely because no other time was available. This may help explain why so many African-American burials continued to be held on Sundays even into the early twentieth century. All of the accounts suggest that the burials were rather significant affairs, with

prayers, singing, and sometimes even an air of a pageant. Sometimes the service was reported to continue until the morning. Many accounts from the mid- and late-nineteenth century reveal that African-Americans were uniformly buried east-west, with the head to the west. One freed slave explained that the dead should not have to turn around when Gabriel blows his trumpet in the eastern sunrise. Others have suggested they were buried facing Africa.

Even where the slaves were buried seems similar. All seem to represent marginal property — land which the planter wasn't likely to use for other purposes. The burial spots have been described as "ragged patches of live-oak and palmetto and brier tangle which throughout the Islands are a sign of graves within, — graves scattered without symmetry, and often without headstones or head-boards, or sticks . . ." A more recent researcher, Elsie Clews Parsons, observes that the African-American cemeteries were:

hidden away in remote spots among trees and underbrush. In the middle of some fields are islands of large trees the owners preferred not to make arable, because of the exhaustive work of clearing it. Old graves are now in among these trees and surrounding underbrush.

Frances Anne Kemble reported that while an enclosure was erected around the graves of several white laborers buried on Butler Island, the graves of the African-American slaves were trampled on by the plantation cattle.

A black cemetery in the South Carolina up country was described by John William DeForest shortly after the Civil War. He commented that while a few marble and brick headstones were present, most were "wooden slabs, all grimed and mouldering with the dampness of the forest. . . ." At the time, some of the wooden slabs had painted names and dates. The paint likely flaked off only shortly before the wood itself rotted away.

EXHIBIT M - "AFRICAN AMERICAN CEMETERIES AND THE RESTORATION MOVEMENT" UNIVERSITY OF GEORGIA, SLAVE BURIAL GROUND CHARACTERISTICS

9/20/2019

African American Cemeteries and the Restoration Movement - Brooklyn Cemetery Project - Death and Human History in Athens

DEATH AND HUMAN HISTORY IN ATHENS

[Baldwin Hall Excavation](#) [Brooklyn Cemetery](#) [Oronoke Hill Cemetery](#) [View all items](#) [Contributors](#)

AFRICAN AMERICAN CEMETERIES AND THE RESTORATION MOVEMENT

African American Burial Traditions

Africa is a heterogeneous continent with various religions, racial identities, and cultural practices. When slaves arrived in America, they came from different tribes. Once in America, slaves were deliberately separated from family members. Then implicitly and explicitly discouraged by their owners from expressing their cultural beliefs. One form of resistance to cultural assimilation was creating their own burial customs.

On plantations, funeral ceremonies usually occurred at night. Since slaves had to work all day, night was the only time for them to participate in the ceremony. But it also allowed neighboring slaves to commune across legalistic borders. This tradition continued into the 20th century. Pre-Civil War, slave owners, not wanting to use their arable land for slave burials, would bury slaves in hidden in remote spots among trees and underbrush. During the ceremony, attendees would perform prayers and sing hymns. Some cemeteries have their headstones facing west for spiritual reasons. Some graves are marked with trees, plants (ex: Yucca) or wooden planks. Believing that since trees would continue after their burial, death would not be their end. By using temporary markers, the residents ensured that there would always be room in the cemetery for future generations. Once buried, slaves from coastal regions would surround the gravesite with shells to enclose the soul's immortal presence. In other areas, offerings could be the last physical object the deceased touched.

Consequently, these traditions, along with the South's segregated past, has lead to the negative perception of Black cemeteries as being abandoned and unkempt.



Figure 1. Although there is no way to know for certain, based on our knowledge of the tradition of leaving everyday items at a gravesite, it is possible that this bottle was left purposely by the family of the deceased.



Figure 2. In Brooklyn Cemetery there are several family plots (see figure 2). At the same time, several families are sprawled across several sections. Family members may not be buried together because Black cemeteries did not typically preserve family groupings.

Preserving Black Cemeteries

In our capitalistic society, we have the tendency to focus on the most profitable options instead of the most humanistic. Landowners may ignore the existence of the cemetery or underestimate the size of the plot to support their building developments. Similarly, the University of Georgia had a recent issue, finding unidentified corpses in their construction zone.

However, most Black cemeteries were not delineated by deeds or legal instruments. Since cemeteries do not provide tax revenue for the county, disincantizing the county from keeping up with the owners of the plots. Ultimately leaving the cemeteries forgotten by the local government. Once reintroduced to the cemeteries, counties have the legal right to choose whether or not to maintain 'abandoned' cemeteries. With that in mind, counties should be sure to include local Black communities in the decision making.

Some Black cemeteries do not have records of names, death certificate numbers or lists of relatives. Let alone a map of where people are buried. At Brooklyn Cemetery we are fortunate enough to have a record of names, death certificate numbers,

[Brooklyn Cemetery Project](#)
[A Short History of Black Athens](#)
[Brooklyn Cemetery: A Brief History and a Tour](#)
[African American Cemeteries and the Restoration Movement](#)
[Brooklyn Cemetery Map](#)
[Brooklyn Cemetery: A Photo Gallery](#)
[Who is Buried in Brooklyn?](#)
[Data Analyses and Graphs](#)
[Timeline](#)

<https://digilab.libs.uga.edu/cemetery/exhibits/show/brooklyn/african-american-cemeteries-an?fbclid=IwAR3euklEHFI0w6q2F7486J0UbAhvXKTA328V...>

1/4

EXHIBIT N - "GRAVE MATTERS: THE PRESERVATION OF AFRICAN AMERICAN CEMETERIES" BY THE CHICORA FOUNDATION, PAGE 5



Example of a stone marker for Albert Doctor, born a slave, in Georgetown County, South Carolina.

Graves were marked in a variety of ways besides wood or stone slabs. Sometimes unusual carved wooden staffs, thought perhaps to represent religious motifs or effigies, were used. Some graves were marked using plants, such as cedars or yuccas, and anthropologists have suggested this tradition may reflect an African belief in the living spirit. This tradition can be traced at least to Haiti, where blacks, probably mixing Christian religion with African beliefs, explain that, "trees live after, death is not the end." Yuccas and other "prickly" plants may also have been used "to keep the spirits" in the cemetery. Other graves were marked with

pieces of iron pipe, railroad iron, or any other convenient object.

At times shells were used to mark the grave. One anthropologist in the early 1890s remarked that "nearly every grave has bordering or thrown upon it a few bleached sea-shells of a dozen different kinds." This practice has been traced back to at least the BaKongo belief that the sea shell encloses the soul's immortal presence. There was a prayer to the mbamba sea shell:

As strong as your house you shall keep my life for me. When
you leave for the sea, take me along, that I may live forever
with you.

Even into the twentieth century some Gullah explained the use of shells on graves



African-American graves on Springfield Plantation, now part of Brookgreen Gardens, in January 1931. Courtesy of Brookgreen Gardens Archives, Murrells Inlet, South Carolina.

EXHIBIT O - THE CEMETERY YUCCAS



(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

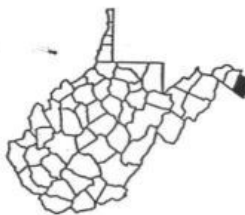


EXHIBIT Q - AFRICAN METHODIST EPISCOPAL CHURCH DISTANCE TO CEMETERY



EXHIBIT R - AFRICAN METHODIST EPISCOPAL CHURCH OF KEARNEYSVILLE SHPO SURVEY, PAGE 1

MBJ RESOURCE #: 042



WEST VIRGINIA HISTORIC PROPERTY INVENTORY FORM

STREET ADDRESS East side of CSX Railroad		COMMON/HISTORIC NAME <input checked="" type="checkbox"/> Common <input checked="" type="checkbox"/> Historic <input type="checkbox"/> Both Methodist Episcopal Church		NO. IN SURVEY JF-0078- 6058		NO. OF BAYS FRONT: <input type="text" value="1"/> SIDE: <input type="text" value="3"/>	
TOWN OR COMMUNITY Harts Town		COUNTY Jefferson		NEGATIVE NO. 8.7-10		NOT VISIBLE FROM ROAD <input type="checkbox"/>	
ARCHITECT/BUILDER Unknown		DATE OF CONSTRUCTION 1890-1905		STORIES 1			
NAT. REGISTER LISTED <u>n/a</u> STATE REGISTER LISTED <u>n/a</u>		ROOFING MATERIAL Slate		EXTERIOR BUILDING FABRIC Asphalt roll brick siding			
PROPERTY USE OR FUNCTION Abandoned (current); church (historic)		TYPE OF FOUNDATION Poured concrete		STYLE (STAFF USE ONLY)			
SURVEY ORGANIZATION AND DATE Michael Baker Jr., Inc. 501 Parkway View Dr. Pittsburgh, PA 15205 2/14/96		QUADRANGLE NAME Martinsburg					
		PART OF WHAT SURVEY West Virginia Route 9					
SITE PLAN MBI 042 and 043 JEFFERSON CO. TAX #MD 4/3 MBI 042 = 1-Story, Frame Church MBI 043 = 1-Story, Block Meeting House a = Outbuilding 		SITE NO. <input type="text"/>					

**EXHIBIT R - AFRICAN METHODIST EPISCOPAL CHURCH OF KEARNEYSVILLE
SHPO SURVEY, PAGE 2**

MBJ RESOURCE #: 042

PRESENT OWNERS (b) (5) DPP, (b) (7) (C)	OWNER ADDRESS (b) (5) DPP, (b) (7) (C) Kearneysville, WV 25430
---	--

GENERAL CONDITION OF PROPERTY
Neglected

ADDITIONS	IF YES, DESCRIBE
<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

ALTERATIONS	IF YES, DESCRIBE
<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Asphalt roll brick siding.

NO. AND NATURE OF OUTBUILDINGS
None.

DESCRIPTION OF PROPERTY (ORIGINAL AND PRESENT)

The Methodist Episcopal Church is one-story high and has a one-room, rectangular plan with a projecting rear choir supported by concrete piers. The abandoned church is one bay wide and three bays deep. The frame church is clad with asphalt roll brick siding over drop wood siding, and the front-gable roof is sheathed in slate. The fenestration consists of one-over-one double-hung lancet arch windows with wood lug sills. A projecting gabled vestibule fitted with a set of double four-panel doors is centered on the front facade. A second entrance is located on the right side of the vestibule. Inside the vestibule, another set of double four-panel doors opens into the church nave. These doors are capped by an arched two-light transom with diagonal patterned stained glass. The church is in a collapsed state and is in an overgrown setting.

HISTORICAL/CULTURAL SIGNIFICANCE

The Methodist Episcopal Church was constructed some time after a parcel of land was purchased by (b) (5) DPP, (b) (7) (C) trustees for the Methodist Episcopal Church of Kearneysville, from (b) (5) DPP, (b) (7) (C) in 1890 (JCDB W:293). Abandoned for many years and in a severely deteriorated condition, the property does not retain sufficient integrity to qualify as a significant historic resource. Therefore, the Methodist Episcopal Church should be considered not eligible for inclusion in the National Register of Historic Places.

BIBLIOGRAPHICAL REFERENCES

Jefferson County Deed Book W: 293.

McAlester, Virginia and Lee McAlester
1990 A Field Guide to American Houses. New York: Alfred A. Knopf.

Phillips, Steven J.
1992 Old House Dictionary. Washington D.C.: Preservation Press.

FORM PREPARED BY
Cynthia A. Liccese and Connie Torbeck

DATE
04/01/96

ADDRESS
Michael Baker Jr., Inc.
501 Parkway View Dr.
Pittsburgh, PA 15205

**EXHIBIT S - AFRICAN METHODIST EPISCOPAL MEETING HOUSE SHPO
SURVEY, PAGE 1**



A. T.

**WEST VIRGINIA HISTORIC PROPERTY
INVENTORY FORM**

STREET ADDRESS Off Oak Tree Road on east side of CSX tracks		COMMON/HISTORIC NAME Concrete-block Dwelling	NO. IN SURVEY JF-0018 - 0057	NO. OF BAYS 3 FRONT 2 SIDE
TOWN OR COMMUNITY Kearneysville		COUNTY Jefferson	NEGATIVE NO. 4766 (7)	NOT VISIBLE FROM ROAD <input type="checkbox"/>
ARCHITECT/BUILDER		DATE OF CONSTRUCTION ca. 1930s	EXTERIOR BUILDING FABRIC concrete block	
NAT. REGISTER LISTED _____ STATE REGISTER LISTED _____		ROOFING MATERIAL standing-seam metal	STYLE (STAFF USE ONLY) <i>no style</i>	
PROPERTY USE OF FUNCTION Single family residential abandoned		TYPE OF FOUNDATION concrete block	PHOTOGRAPH (2" x 3" CONTACT)	
SURVEY ORGANIZATION AND DATE John Milner Associates, Inc. October 8, 1992		QUADRANGLE NAME Martinsburg		
		PART OF WHAT SURVEY West Virginia Route 9		



Site No. JMA 033

035

**EXHIBIT S - AFRICAN METHODIST EPISCOPAL MEETING HOUSE SHPO
SURVEY, PAGE 2**

PRESENT OWNERS

OWNER ADDRESS

GENERAL CONDITION OF PROPERTY

ruinous

ADDITIONS

☐

YES

☒

NO

IF YES, DESCRIBE

ALTERATIONS

☐

YES

☒

NO

IF YES, DESCRIBE

NO. AND NATURE OF OUTBUILDINGS

None

DESCRIPTION OF PROPERTY (ORIGINAL AND PRESENT)

This house, located off Oak Tree Road in Hart's Town, is a one-story, three-bay, gable-roofed dwelling with a raised basement. The walls are constructed of concrete block and the house is built into a hill. Fenestration consists of three-over-one, double-hung sash, indicating a ca. 1930s construction date. The gable ends are sheathed in weatherboard, and a concrete interior flue protrudes from the roof ridge.

HISTORICAL/CULTURAL SIGNIFICANCE

This concrete-block, ca. 1930s, dwelling is representative of the type of residences commonly built in the African-American village of Hart's Town in the early twentieth century. Abandoned and in poor condition, it is recommended not eligible for the National Register.

BIBLIOGRAPHICAL REFERENCES

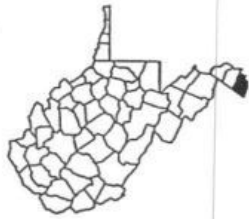
FORM PREPARED BY Margarita J. Wuellner

DATE 10-8-92


ADDRESS John Milner Associates, Inc.
5250 Cherokee Avenue, 4th Floor
Alexandria, VA 22312

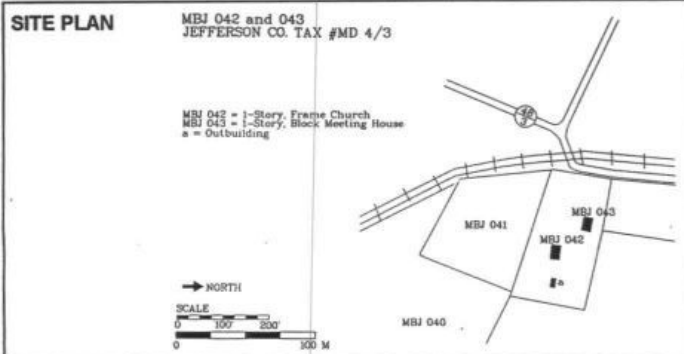
EXHIBIT S - AFRICAN METHODIST EPISCOPAL MEETING HOUSE SHPO SURVEY, PAGE 3

MBJ RESOURCE #: 043



WEST VIRGINIA HISTORIC PROPERTY INVENTORY FORM

STREET ADDRESS East side of CSX Railroad	COMMON/HISTORIC NAME <input checked="" type="checkbox"/> Common <input checked="" type="checkbox"/> Historic <input checked="" type="checkbox"/> Both Methodist Episcopal Meeting House	NO. IN SURVEY SF-0078-0057	NO. OF BAYS 3 FRONT 2 SIDE
TOWN OR COMMUNITY Harts Town	COUNTY Jefferson	NEGATIVE NO. 8.11	NOT VISIBLE FROM ROAD <input type="checkbox"/>
ARCHITECT/BUILDER Unknown	DATE OF CONSTRUCTION 1945	STORIES 1	
NAT. REGISTER LISTED DATE <u>n/a</u> STATE REGISTER LISTED DATE <u>n/a</u>	ROOFING MATERIAL Standing seam metal	EXTERIOR BUILDING FABRIC Concrete block	
PROPERTY USE OR FUNCTION Abandoned (current); meeting house (historic)	TYPE OF FOUNDATION Concrete block	STYLE (STAFF USE ONLY)	
SURVEY ORGANIZATION AND DATE Michael Baker Jr., Inc. 501 Parkway View Dr. Pittsburgh, PA 15205 2/14/96	QUADRANGLE NAME Martinsburg		
	PART OF WHAT SURVEY West Virginia Route 9		



SITE NO.

**EXHIBIT S - AFRICAN METHODIST EPISCOPAL MEETING HOUSE SHPO
SURVEY, PAGE 4**

MBJ RESOURCE #: 1043

PRESENT OWNERS

(b) (5) Privacy, (b) (7)(C) DPP

OWNER ADDRESS

(b) (5) Privacy, (b) (7)(C) DPP

Kearneysville, WV 25430

GENERAL CONDITION OF PROPERTY

Neglected

ADDITIONS

IF YES, DESCRIBE

☒ Yes

☐ No

ALTERATIONS

IF YES, DESCRIBE

☒ Yes

☐ No

NO. AND NATURE OF OUTBUILDINGS

None.

DESCRIPTION OF PROPERTY (ORIGINAL AND PRESENT)

The Methodist Episcopal Meeting House is a one-story, rectangular plan, concrete block building that currently stands abandoned. The building is three bays wide and two bays deep. The building is built into a hillside so that an entrance on the front gable leads into the basement, and an entrance on the rear gable end leads into the first floor. The unfinished basement has a dirt floor. The gable ends are clad with weatherboard and the side-gable roof is sheathed with standing seam metal. The fenestration consists of three-over-one double-hung sash windows set into plain wood frames. A concrete block interior chimney straddles the roof ridge.

HISTORICAL/CULTURAL SIGNIFICANCE

The Methodist Episcopal Meeting House, used in conjunction with the neighboring African-American Methodist Episcopal Church, was built circa 1940-1945. The building, which has been abandoned for a long period of time, stands in a deteriorated condition. All of the doors and windows are missing, and the interior has been damaged by exposure to the elements and neglect. The meeting house is a simple vernacular form lacking architectural distinction. The building does not retain sufficient integrity to qualify as a significant historic resource. Therefore, the Methodist Episcopal Meeting House could be considered not eligible for inclusion in the National Register of Historic Places.

BIBLIOGRAPHICAL REFERENCES

McAlester, Virginia and Lee McAlester

1990 A Field Guide to American Houses. New York: Alfred A. Knopf.

Phillips, Steven J.

1992 Old House Dictionary. Washington D.C.: Preservation Press.

FORM PREPARED BY

Cynthia A. Liccese and Connie Torbeck

DATE

04/01/96

ADDRESS

Michael Baker Jr., Inc.
501 Parkway View Dr.
Pittsburgh, PA 15205

**EXHIBIT T - JEFFERSON COUNTY ASSESSOR AND TAX INFORMATION FOR
AFRICAN METHODIST EPISCOPAL CHURCH AND MEETING HOUSE**

Jefferson County West Virginia
Tax Map Viewer

Layers

- ☒ 2020 Parcels
- ☐ 2019 Parcels
- ☐ 2018 Parcels
- ☐ 2017 Parcels
- ☐ 2016 Parcels
- ☐ 2015 Parcels
- ☐ 911 Address
- ☒ Annotation

Identify

Find

Measurement

Print

Directions

Google Street View

Identify

Basemaps

102 9.10Ac

11.1 24 Ac

1.16Ac

2.08Ac

1.1 3.05Ac

7.78Ac

56Ac

9Ac

12.15 11.12Ac

12.4

12.1 12.12

WVA RT9

WVA

GRANNY

MIDDLEWAY

RANSON

esri

Tax Year: 2020
Parcel: 07 40003000000000
Deeded Owner: M E CHURCH

Parcel ID: 07 40003000000000
Tax Year: 2020
Deeded Owner: M E CHURCH
C/O:
Owner Address:
City:
State:
Zip: 40404
Deed Book/Page: W/293
Description: KEARNEYSVILLE
Year Built: 0
Stories: 0
Zoom to

**EXHIBIT U - JEFFERSON COUNTY ASSESSOR AND TAX INFORMATION FOR
AFRICAN METHODIST EPISCOPAL CHURCH AND MEETING HOUSE**

ASSESSMENT DISTRICT		LEGAL DESCRIPTION				
MIDDLEWAY DIST. 7		Kearneysville Lot		EXEMPT		
MAP NO.	PLOT NO.	LOT SIZE	ACREAGE			
4	3	90 x 220 Irregular				
OWNER'S NAME		ADDRESS	DATE ACQUIRED	FED. TAX STAMPS	DEED BOOK	PAGE NO.
1	M. E. Church, Colored		5-11-1891		DB-W	293
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						

EXHIBIT V - 05/03/19 USPS DELIVERY RECEIPT OF MR. SURKAMP'S REPORT TO WVSHPO

USPS TRACKING# 9402 3999 8079 9796 96		First-Class Mail Postage & Fees Paid USPS Permit No. G-10
Sender: Please print your name, address, and ZIP+4® in this box® <div style="border: 1px solid black; padding: 5px; margin: 5px;"> <p>Jim Surkamp PO Box 1035 Shepherdstown WV 25443</p> </div>		
RECIPIENT: COMPLETE THIS SECTION 1. Create items 1, 2, and 3. 2. Print your name and address on the reverse so that we can return the card to you. 3. Attach this card to the back of the mailpiece, or the front if space permits. Addressed to: 350N Pierce NW DN of Culture & History JPO 1900 Kanawha Rly Charleston WV 25305 590 9402 3999 8079 9796 96		COMPLETE THIS SECTION ON DELIVERY A. Signature B. Received by (Printed Name) C. Date of Delivery D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No 3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery
4. Number (Transfer from service label) 7019 0160 0000 1074 5531 PSN 3811, July 2015 PSN 7530-02-000-9053		Restricted Delivery Domestic Return Receipt

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[Track & Manage](#)
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[International](#)
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Tracking Number: 70190160000010745531 [Remove X](#)

Status

Delivered

Your item has been delivered to an agent at 5:10 am on May 3, 2019 in CHARLESTON, WV 25301.

May 3, 2019 at 5:10 am
 Delivered To Agent
 CHARLESTON, WV 25301

Delivered

[Tracking History](#)

[Product Information](#)

[See Less](#)

EXHIBIT W - 2005 WV CEMETERY SURVEY FORM FOR THE CEMETERY, PAGE 1

West Virginia Cemetery Survey Form

1. Site Number (OFFICE USE ONLY): 465F507

2. Cemetery Name (Historic / Common, please circle): Jefferson Orchard Cemetery

3. County: Jefferson 4. 7.5' Quadrangle: Martinsburg

5. UTM Zone: 18 Easting 251748 Northing 4362351

6. Ownership: Public: Municipal _____ County _____ State _____ Federal _____
Private: Family _____ Church _____ Denomination _____
Fraternal _____ Other Unknown

7. Burial Population (ethnic composition, general age of individuals, explain):
Euro and African American

8. Public Accessibility: unrestricted x restricted _____ for permission to visit, contact

9. Access into Cemetery: by foot x by car _____

10. Terrain: On the edge of a low, rolling terrace.

11. Bounded by: fence _____ wall _____ hedge _____ other Road on south and west

12. Condition: well maintained _____ poorly maintained x
overgrown, easily identifiable x overgrown, unidentifiable _____
unidentifiable, but known to exist through tradition or other means (identify source)

13. Cemetery Size and Orientation (please give dimensions in feet, and indicate compass direction for long and short axis): 350 feet east/west and 150 feet north/south

14. Historical Background

Cemetery appears to be in original location. Many of the people buried here are veterans of WWI, WWII and Korea. Many headstones have fallen over. Some caskets appear to have been removed. The number of burials (53) is an approximation. Portions of this cemetery are very overgrown, and There are large gaps where no headstones are extant but burials may be there.

15. Form Completed By: J. Blake Date: 8-21-05

EXHIBIT W - 2005 WV CEMETERY SURVEY FORM FOR THE CEMETERY, PAGE 2

Site Number: 46JF507 Cemetery Name: Jefferson Orchard Cemetery

16. Gravestones (Please list the number of gravestones that fit in the categories below. If this is a guess or an approximation, put "circa" before the number. Include photographs and/or sketches of representative decorative carvings.) :

number of headstones 53 burials _____ Footstones ? yes _____ no _____

number of gravestones with burial dates from the 18th century None

19th century None 20th century all

please list the earliest date 1900 most recent date 1994

number of gravestones of each material : slate _____ marble 3

granite 20 sandstone _____ fieldstone _____ other Unknown material

number of gravestones with decorative carvings of skulls none

faces none urns / willows none other (explain) Praying hands (1), crosses (4)

number of gravestones that are readable all eroded _____ badly tilted 3

cracked / broken _____ broken but standing 5

restoration efforts, if any none

17. Please attach : 1) a copy of the topographic quadrangle indicating the cemetery's location, and 20 general photograph (s) of the cemetery showing its setting and / or location.

EXHIBIT X - 03/07/2017 ERM, INC. LETTER TO WVSHPO, PAGE 1

Environmental
Resources
Management, Inc.

204 Chase Drive
Hurricane, WV 25526
(304) 757-4777
(304) 757-4799 (fax)
www.erm.com

March 7, 2017

Attn: Ms. Susan M. Pierce, Director
Deputy State Historic Preservation Officer for Resource Protection
West Virginia Division of Culture and History
The Cultural Center
1900 Kanawha Boulevard East
Charleston, WV 25305-300



Subject: Information Consultation/ Data Request
Proposed Development Parcel; Granny Smith Lane
Kearneysville, Jefferson County, West Virginia
39.374740° N, 77.878192° W
Martinsburg, WV USGS Quadrangle

Ms. Pierce:

Environmental Resources Management (ERM) is supporting the environmental review for potential development of a parcel along Route 9 near to Kearneysville in Jefferson County, West Virginia. ERM recognizes that the West Virginia Division of Culture and History is the State Historic Preservation Office (SHPO), in addition to other agencies, and have the responsibility for consultation regarding the protection of various natural and cultural resources. ERM is pleased to provide the information contained in this submittal for your consultation in providing comments in identifying historic properties that are listed or eligible for listing on the National Register of Historic Places and archeological sites that may be impacted by this project.

The proposed development is located approximately 1.0 miles southeast of the town of Kearneysville, centered as the coordinates of approximately 39.374740° N, 77.878192° W. Currently the scope of work involves an environmental phase I site assessment. The approximate project area is shown on **Figure 1 - Site Location**. **Figure 2 - Property Extent** shows the approximate extent of the proposed development, which would mostly be designated for construction. The property is the site of former orchard operations and the rows of cultivated trees shown in the aerial imagery are no longer present.

Currently the limits of disturbance (LOD) is estimated at 150 acres. Please note, this acreage is a preliminary estimate. Of this 150 acres, approximately 4 acres are trees. ERM is not aware any archeological sites near the area, however, no archeological studies have been conducted. In addition, it is likely that the majority of soils on this site have been altered as this was the former site of an apple orchard.

EXHIBIT X - 03/07/2017 ERM, INC. LETTER TO WVSHPO, PAGE 2

Page 2

Environmental
Resources
Management, Inc.

ERM respectfully requests your initial evaluation of our findings and comments or recommendations for the potential development on this property. If new or additional data is available for the site area, ERM welcomes the opportunity to review that information and incorporate it into our environmental review. If you have any questions concerning this submittal, please contact Matt Hurst at (607) 745-8619 or matt.hurst@erm.com.

Sincerely,



Matt Hurst, PhD
Associate Engineer, ERM

Enclosures



EXHIBIT X - 03/07/2017 ERM, INC. LETTER TO WVSHPO, PAGE 4

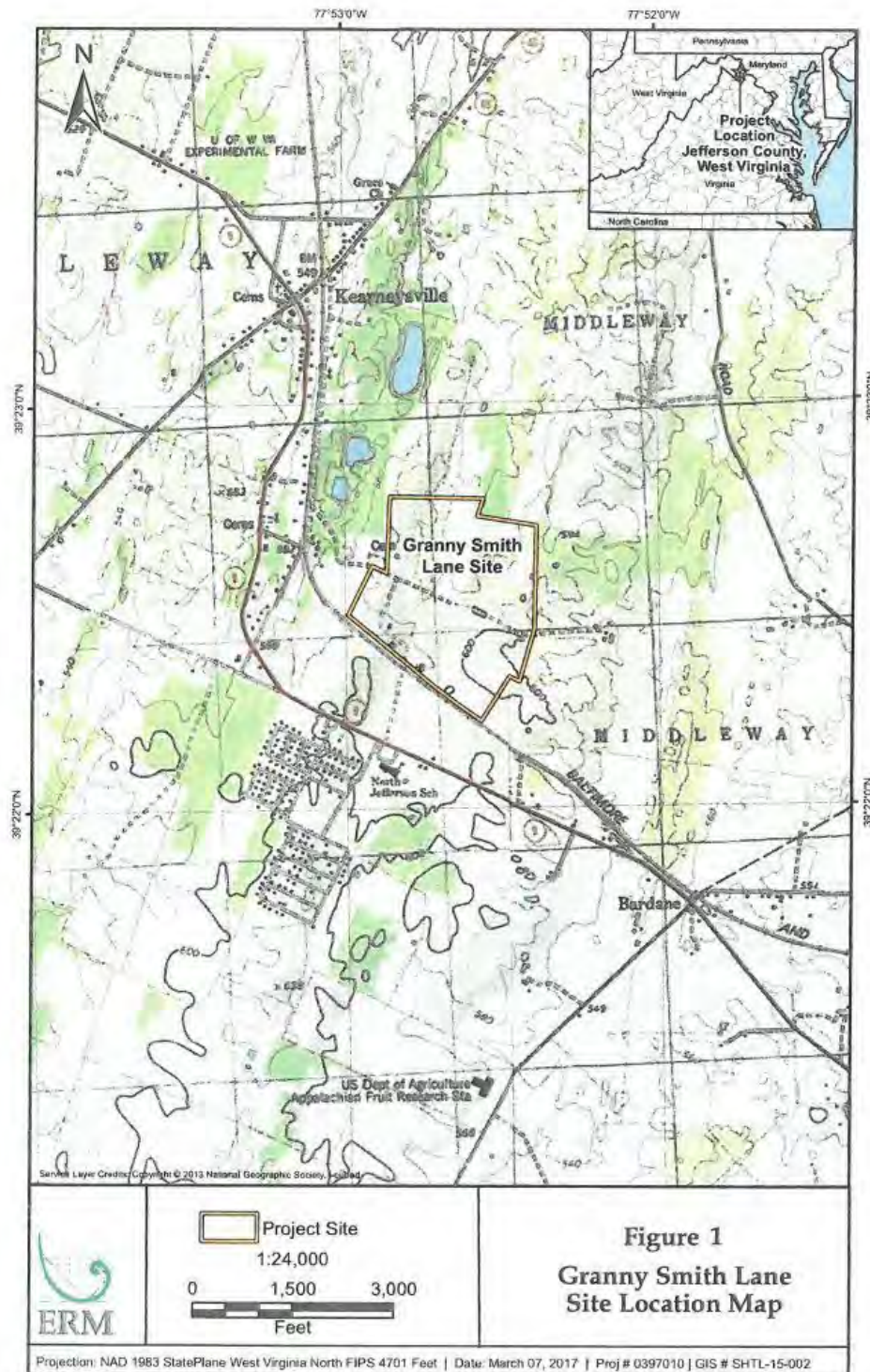


EXHIBIT Y - 04/03/2017 WVSHPO LETTER TO ERM, INC., PAGE 1



April 3, 2017

The Culture Center
1900 Kanawha Blvd., E.
Charleston, WV 25305-0300

Randall Reid-Smith, Commissioner

Phone 304.558.0220 • www.wvculture.org
Fax 304.558.2779 • TDD 304.558.3562

11/13/04/05/06/07

Matt Hurst, Ph.D.
Associate Engineer
ERM, Inc.
204 Chase Drive
Hurricane, West Virginia 25526

RE: Proposed Development Parcel – Granny Smith Lane, Kearneysville
FR# 17-437-JF

Dear Mr. Hurst:

We have reviewed the above referenced project to determine potential effects to cultural resources. As required by Section 106 of the National Historic Preservation Act, as amended, and its implementing regulations, 36 CFR 800: "Protection of Historic Properties," we submit our comments.

According to the submitted information, the project will result in the development of a parcel of land located along Route 9 near Kearneysville in Jefferson County. The limits of disturbance (LOD) is estimated at 150 acres, of which approximately four acres are comprised of former apple orchard trees.

Architectural Resources:

We cannot complete our review with the information submitted. Please forward photographs of any buildings and/or structures that will be within the project area and within the line-of-sight of the proposed above ground components of this project. We understand that the development of this site in conceptual at this time and it appears this is an effort to complete compliance to attract developers. There are several previously recorded properties on our WV SHPO GIS (<http://mapwv/shpo>) that if still standing will need updated information to determine if they are still eligible for the National Register of Historic Places. If there are no solid proposals and you wish to move forward we recommend for the view shed anticipating 2-3 story buildings. These photographs should be keyed to a USGS topographic map. We will provide additional comments upon receipt of the requested information; however, we reserve the right to request additional information, including the completion of Historic Property Inventory (HPI) forms.

Archaeological Resources:

Our records indicate that portions of the current project area underwent a Phase I archaeological survey for FR# 05-977-JF. One archaeological resource, 46JF501, was identified during that survey. This resource was determined not eligible for inclusion in the National Register of Historic Places.

However, the prior survey work does not investigate the entire current project area. Aerial photographs and project mapping denote the presence of buildings, including a early twentieth century farmstead, within the project area. Also, Civil War skirmishes and troop movements took place in the project area vicinity. As a result, we have concerns that there may be unrecorded archaeological deposits present. We, therefore, request that a Phase I archaeological survey be conducted in the portions of the project area that were not previously surveyed. The phase I survey should include a metal detector survey. We will provide further comment upon receipt of the resulting Phase I archaeological survey technical report.

EXHIBIT Y - 04/03/2017 WVSHPO LETTER TO ERM, INC., PAGE 2

April 3, 2017
Dr. Hurst
FR# 17-437-JF
Page 2

Cemetery Resources:

Our records and project mapping note the presence of a cemetery, 46JF507, immediately adjacent to the project area. This cemetery does not have a determination of eligibility for the National Register of Historic Places at this time. Since it is presently not in the direct footprint of the project area only the viewshed would have to be evaluated should the cemetery be determined eligible. We will provide further comment upon receipt of the additional information.

Public Comments:

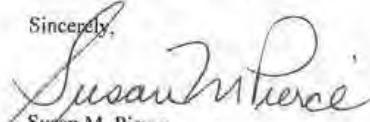
In addition, federal regulations in 36 CFR 800.2(d)(1), 800.2(d)(2), 800.3(e), 800.6(a)(4) all stress the importance of public comment during the Section 106 process. If you have already completed this aspect of the requirements under Section 106, please provide written documentation of that along with any comments you have received. If you have not already done so, please forward a copy of the submitted information for the project to Jefferson County Historic Landmark Commission, allowing them the opportunity to comment on this project. Below is their contact information. Please forward any comments that you receive to this office. If you receive no comments, please indicate that *in writing* to this office. Please contact the below for further information.

Jefferson County Historic Landmark Commission
Post Office Box 23
Charles Town, West Virginia 25414

In addition to our usual comments, your letter requested "recommendations for the potential development on this property." It is our opinion, beyond the concerns mentioned above, that we do not have an interest in making specific recommendations for development this property at this time.

We appreciate the opportunity to be of service. *If you have questions regarding our comments or the Section 106 process, please contact, Carolyn Kender, Archaeologist, or Ernest E. Blevins, Structural Historian at (304) 558-0240.*

Sincerely,



Susan M. Pierce
Deputy State Historic Preservation Officer

SMP/CMK/EEB

EXHIBIT Z - 08/21/201 WVSHPO EMAIL TO JCHLC

Kender, Carolyn M

From: Kender, Carolyn M
Sent: Tuesday, August 21, 2018 3:48 PM
To: (b) (6) Privacy, (b) (7) (C) Enforcement Privacy
Cc: Blevins, Ernest E
Subject: cemeteries in vicinity of Rockwool Project in Jefferson County
Attachments: 46-JF-507.pdf; 46-JF-584.pdf

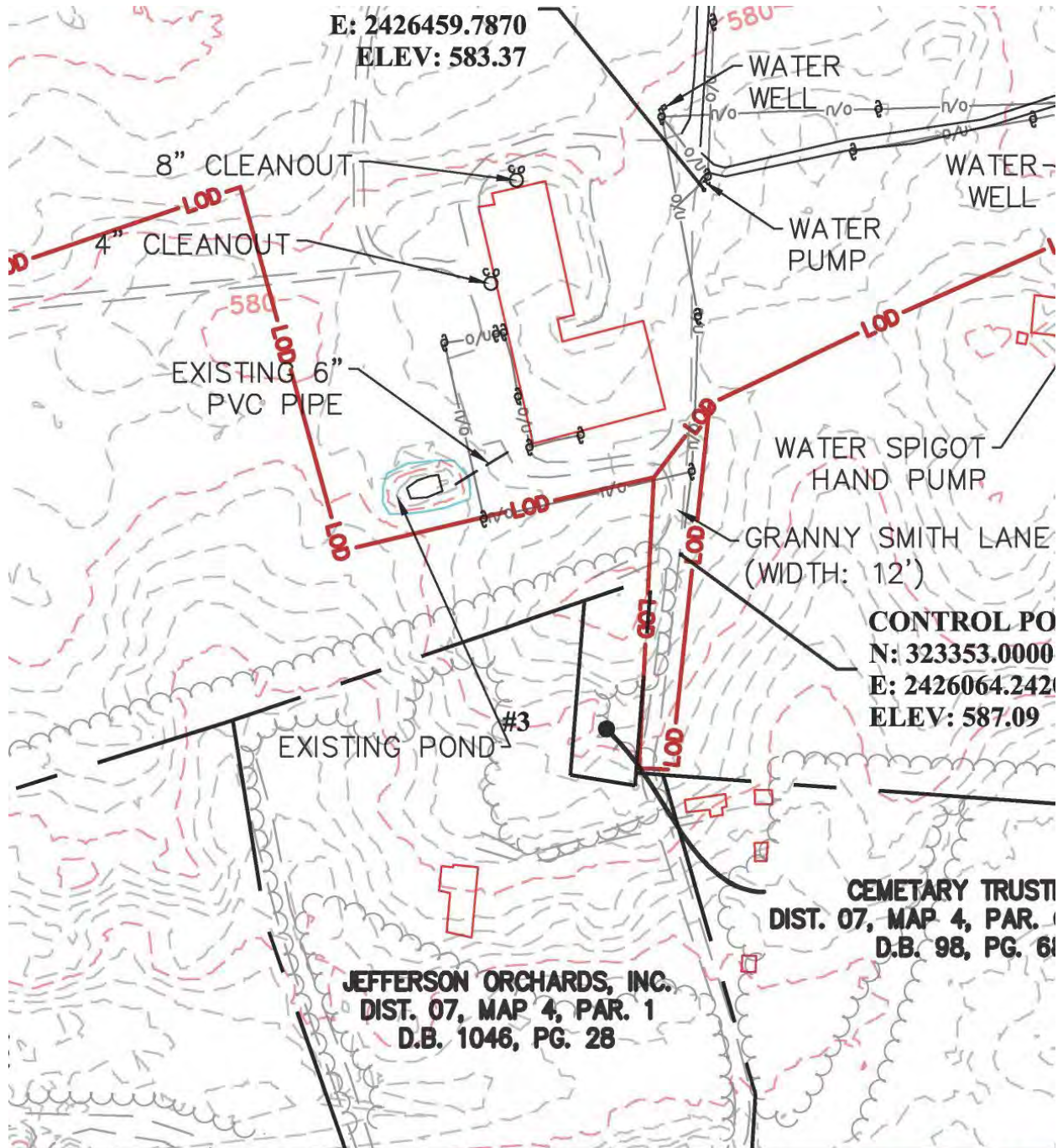
(b) (6) Privacy, (b) (7) (C) (b) (7) (D)

Thank you for notifying our office about concerns the Jefferson County HLC has received regarding potential impacts to a cemetery in the vicinity of the proposed Rockwool/Roxul project located off of Granny Smith Lane in Jefferson County. As I indicated in our phone conversation this morning, we have two documented cemeteries near the proposed Rockwool project area. The closest cemetery is the Jefferson Orchard Cemetery (46-JF-507), which is located immediately adjacent to the western edge of the Rockwool project area. The other cemetery is the St. Paul Baptist Church Cemetery (46-JF-584) and this resource is well outside the project's limits of disturbance. It is our understanding that the Jefferson Orchard Cemetery will not be impacted by the project's construction activities. As per your request, I have attached copies of the cemetery forms for these two resources. Once you have looked over the attached information, please let me know if the Jefferson Orchard Cemetery is the same cemetery that you have received the concerns about. If it is not the same cemetery, can you provide a location of the cemetery in question?

Thank you,

Carolyn M. Kender
Archaeologist
State Historic Preservation Office
WV Department of Arts, Culture, and History
The Culture Center (Building 9)
1900 Kanawha Blvd, East
Charleston, WV 25305-0300
(304) 558-0240 ext. 719

**EXHIBIT AA - WVDEP APPROVED ROCKWOOL STORMWATER
CONSTRUCTION MAP CLOSEUP**



SCALE:	
DRAWN:	DATE:
CHECKED:	DATE:
APPROVED:	DATE:



**EXHIBIT BB - ROCKWOOL AND JEFFERSON ORCHARDS, INC. EASEMENT
AGREEMENT FOR GRANNY SMITH LANE EMERGENCY ACCESS ROAD (DEED
BOOK 1197 PAGE 680), PAGE 1**

5/14/2019

IDX Image Jefferson

Image																								
1 of 9																								
Previous Document	First Page	Previous	Go To Page	Next	Last Page	Next Document	Negate	Left	Flip	Right	Width	Fit Screen	Zoom In	Zoom Out	Login									
Navigation					Image					View					Print									
DEED BOOK					1197					Suffix					680					Suffix				

TEMPORARY EASEMENT AGREEMENT FOR EMERGENCY ACCESS

THIS TEMPORARY EASEMENT AGREEMENT FOR EMERGENCY ACCESS ("Agreement") is dated October 20, 2017, and made effective on October 25, 2017 (the "Effective Date"), by and between ROXUL USA INC., a Delaware corporation, having a mailing address of 4594 Cayce Road, Byhalia, Mississippi 38611, hereinafter referred to as GRANTOR, and JEFFERSON ORCHARDS, INC., a West Virginia corporation, having a mailing address of P.O. Box 700, Kearneysville, West Virginia 25430, hereinafter referred to as GRANTEE.

Recitals:

A. Pursuant to that certain Real Estate Purchase and Sale Agreement dated July 7, 2017 (the "Purchase Agreement"), by and between Grantee, as seller, and Grantor, as buyer, Grantor will or has already acquired from Grantee approximately 130 acres of land, more or less, located in Ranson Corporation District, Jefferson County, West Virginia, which is more particularly described and shown on Exhibit A plat attached hereto and made a part hereof (the "Grantor Property").

B. Grantee has or will retain ownership to that certain tract or parcel of land located in Ranson Corporation District, Jefferson County, West Virginia, which is more particularly described and shown on Exhibit A plat attached hereto and made a part hereof (the "Grantee Property").

C. Pursuant to the Purchase Agreement, Grantor agreed to grant to Grantee a temporary easement for emergency access over the Grantor Property for the term of four (4) years to allow Grantee sufficient time to construct a second access road to the Grantee Property.

NOW, THEREFORE, WITNESSETH: That Grantor, for the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration to it in hand paid by Grantee, the receipt whereof is hereby acknowledged, does hereby GRANT, BARGAIN, SELL, CONVEY and TRANSFER to Grantee a temporary, non-exclusive emergency access easement and right-of-way for vehicular ingress and egress during the Term (as defined below), over and across a portion of the Grantor Property being more particularly described on that certain Exhibit A plat attached hereto and made a part hereof (the "Emergency Easement").

TO HAVE AND TO HOLD the same during the Term, as defined below, with all rights and appurtenances thereunto belonging, unto Grantee, its successors or assigns.

PROVIDED, HOWEVER, IT BEING UNDERSTOOD AND AGREED between Grantor and Grantee that the Emergency Easement granted herein shall be subject to the following terms and conditions:

EXHIBIT CC - JCHLC 10/10/18 MEETING MINUTES



Jefferson County Historic Landmarks Commission October 10, 2018 Jefferson County Commission Meeting Room

Members present: Martin Burke, Chairman, H.S. Leigh Koonce, Jack Hefestay, Ben Horter, Tony Troxel.

Guests present: (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Jim Surkamp, (b) (6) Privacy, (b) (7)(C) Enforcement Privacy and three others.

Mr. Burke called meeting to order at 7:04 pm

Public Comment:

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy spoke with regard to his opposition to Rockwool and requested the HLC weigh in regarding the smoke stacks that will be erected.

-Jim Surkamp spoke with regard to Rockwool and highlighted the proximity to the (b) (6) Privacy, (b) (7)(C) Enforcement Privacy property and the Greenback Raid.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy questioned the membership of the HLC and its publication of meeting minutes. She also spoke in opposition to Rockwool.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy spoke against the Rockwool project and highlighted the proximity of her family farm, (b) (6) Privacy, (b) (7)(C) Enforcement Privacy to the project.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy suggested the HLC membership, as County Commission appointed agents, are able to request any documents necessary to make an informed decision relating to their decision-making processes. (b) (6) Privacy, (b) (7)(C) Enforcement Privacy also raised concerns about the Charles Town Presbyterian Church Cemetery and its relocation.

Mr. Burke responded to (b) (6) Privacy, (b) (7)(C) Enforcement Privacy and indicated the property is within a municipal boundary and, thus, not under the jurisdiction of the HLC. Mr. Burke spoke with Seth Rivard, Charles Town City Planner, and Mr. Rivard indicated Charles Town is not taking a position relating to the cemetery.

Mr. Burke introduced Tony Troxel who was appointed by the County Commission to the vacancy created by the resignation of (b) (6) Privacy, (b) (7)(C) Enforcement Privacy.

August Minutes: Mr. Horter moved to approve the minutes as presented. Mr. Hefestay seconded the motion which passed unanimously.

EXHIBIT DD - 07/24/17 THRASHER LETTER TO WVSHPO

THRASHER

July 24, 2017

Mr. Ernest Blevins, MFA
Structural Historian for Review and Compliance
West Virginia Division of Culture & History
West Virginia State Historic Preservation Office
1900 Kanawha Boulevard East
Charleston, West Virginia 25305
304-558-0240, ext. 726
ernest.e.blevins@wv.gov

**RE: Section 106 Review Request: Supplemental Information
Proposed Development Parcel - Granny Smith Lane
Route 9, Kearneysville, Jefferson County, WV
TTG Project #101-030-3203
FR# 17-437-JF**

Dear Mr. Blevins:

Pursuant of Section 106 Clearance and per correspondence letter dated April 3, 2017, The Thrasher Group, Inc. (Thrasher) is writing to your office to indicate that Thrasher did not receive comments, concerns, opinions, or questions from the Jefferson County Historic Landmark Commission within the thirty (30) day comment window regarding the Proposed Development Parcel - Granny Smith Lane Project, FR# 17-437-JF.


Consulting Parties/Public Comments:

Federal regulations in 36 CFR 800.2(d)(1), 800.2(d)(2), 800.3(e), 800.6(a)(4), all stress the importance of public comment and involving local government representatives and organization that have demonstrated interest in historic preservation or the undertaking in the Section 106 review process. Therefore, we forwarded a copy of the submitted information for the above-mentioned project to the Jefferson County Historic Landmark Commission to request comments or opinions on this matter on June 5, 2017 (please see **Attachment A**). The letter requested response within thirty (30) days of the date of the letter (i.e., ending July 5, 2017). No comments, concerns, opinions, or questions were received from the Jefferson County Historic Landmark Commission.

If any further documentation or information is required for this project, or if any questions or concerns should arise, please feel free to contact me at (304)-423-5318 or pgardner@thetrashergroup.com.

Sincerely,

THE THRASHER GROUP, INC.


Paige Gardner
Environmental Scientist

Enclosures (1):

Attachment A - Correspondence with the Jefferson County Historic Landmark Commission

THRASHER

June 5, 2017

Jefferson County Historic Landmark Commission
Post Office Box 23
Charles Town, West Virginia 25414

RE: WVSHPO Section 106 Review
Proposed Development Parcel – Granny Smith Lane
Route 9, Kearneysville, Jefferson County, WV
FR# 17-437-JF

To whom it may concern:

The Thrasher Group, Inc. (Thrasher) is submitting to your office notification of a proposed site development project near the intersection of USGS Charles Town, Martinsburg, Middleway, and Shepherdstown 7.5 minute quadrangles in Jefferson County, West Virginia (WV).

The Proposed Development Parcel – Granny Smith Lane project is located approximately 1.0 miles southeast of Kearneysville, northeast of Route 9, at approximate coordinates 39.375353°N, 77.877569°W; please see **Figure 1: Site Location (USGS)** and **Figure 2: Site Location (Aerial)**, enclosed. The subject property boundary encompasses 145 acres and shows the preliminary extent of the proposed site development, which would mostly be designated for construction. The development of this site is conceptual at this time. The subject property boundary is the site of former orchard operations and the rows of cultivated trees shown in the aerial imagery are no longer present.

The project area and/or its view shed have been previously disturbed by agricultural, commercial, highway, industrial, and residential development and use. A review of the National Register of Historic Places (NHRP) indicated the following places as the closest historic listings:

1. Historic Place Name: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy Farm
Address: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy Kearneysville, Jefferson County, WV
Geographic Coordinates: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy
NPS Reference Number: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy
Date Listed: 12-04-1998
Approximately 0.36 air miles northwest from Proposed Project Site
2. Historic Place Name: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy
Address: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy Shenandoah Junction, Jefferson County, WV
Geographic Coordinates: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy
NPS Reference Number: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy
Date Listed: 12-12-1976
Approximately 0.73 air miles east from Proposed Project Site
3. Historic Place Name: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy Farm
Address: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy Shenandoah Junction, Jefferson County, WV
Geographic Coordinates: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy
NPS Reference Number: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy
Date Listed: 11-04-1994
Approximately 0.62 air miles east from Proposed Project Site

THRASHER

Jefferson Co. Historic Landmark Commission
June 5, 2017
Page 2 of 2


Additionally, the Division of Culture and History's GIS database revealed that a Phase I archaeological survey for FR#05-977-JF was previously conducted on approximately 40 acres in the southeast corner of the property when soil was removed during the construction of Route 9. One archaeological resource, 46JF501, was identified during that survey. This resource was determined not eligible for inclusion in the National Register of Historic Places.

The WV State Historic Preservation Office (SHPO) issued a correspondence letter, dated April 3, 2017, requesting a line-of-sight photograph log and keyed mapping of the proposed aboveground components of this project with the recommendation for the view shed anticipating 2-3 story buildings. The SHPO also expressed concerns that there may be unrecorded archaeological deposits present because mapping denotes the presence of buildings, including an early twentieth century farmstead, within the project area; also, Civil War skirmishes and troop movements took place in the vicinity. As a result, SHPO requested that a Phase I archaeological survey be conducted in the portions of the project area that have not previously been surveyed. Additionally, the SHPO recommended a copy of the submitted information for the project be provided to the Jefferson County Historic Landmark Commission, allowing the opportunity to comment on this project. Field work, including: view shed analysis, cemetery resource review, archaeological pedestrian survey, shovel testing and/or deep testing, and metal detector survey, commenced on May 15, 2017. Upon completion of the field work and any additional research that is conducted, a report of the investigation findings will be produced for submittal to the WVSHPO for review.

Federal regulations in 36 CFR 800.2(d)(1), 800.2(d)(2), 800.3(e), 800.6(a)(4), all stress the importance of public comment and involving local government representatives and organization that have demonstrated interest in historic preservation or the undertaking in the Section 106 review process. Therefore, we are forwarding a copy of the submitted information for the above-mentioned project to the Jefferson County Historic Landmark Commission to request your comments or opinions on this matter. Please respond with any comments, concerns, opinions or questions regarding the Proposed Development Parcel - Granny Smith Lane project within thirty (30) days of the date of this letter to the contact information below:

The Thrasher Group, Inc.
Mrs. Paige Gardner, *Environmental Scientist*
600 White Oaks Boulevard
Bridgeport, WV 26330
(304) 423-5318
pgardner@thrashereng.com

Sincerely,
THE THRASHER GROUP, INC.



PAIGE GARDNER
Environmental Scientist

Enclosures (2):
Figure 1: Site Location Map (USGS)
Figure 2: Site Location Map (Aerial)

600 White

940 • Bridgeport, WV

• 304 • 423-5318 • www.thrashereng.com

EXHIBIT FF - JCHLC 07/12/2017 MEETING MINUTES, PAGE 1



Minutes

Jefferson County Historic Landmarks Commission
7pm – County Commission Meeting Room
200 E Washington Str., Charles Town, WV
July 12, 2017

Members Present: Martin Burke (Chair), Leigh Koonce, Sara Lambert (Secretary) Guests:

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

M. Burke called the meeting into order at 7:00 pm.

Public Comment: None.

Meeting Minutes: Minutes of the May meeting were submitted by Sara Lambert and

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

Acceptance was moved by L. Koonce, seconded by M. Burke, and passed.

Treasurer's Report: M. Burke presented the treasurer's report including the balance and that they will be carrying \$10,000 into the next fiscal year. M. Burke also stated that the Landmarks Commission will be receiving WV Fairs and Festival grant for \$4,752 for events at Peter Burr Farm. M. Burke stated the income and the expenses.

Acceptance was moved by L. Koonce, seconded by S. Lambert, and passed.

FY-18 Budget: M. Burke presented the FY-18 budget and there was discussion on various line items. M. Burke suggested to the commission that they should join the National Association for Preservation Commission. The Landmarks Commission has received two grants. One was from the EWV Community Foundation for the Coyle Cemetery and the other was a WV Humanities grant for the printing of two brochures, "The Battle of Shepherdstown" and "The Shepherdstown Cement Mill". The Commission is still waiting to hear about a grant from the CVB for the John Brown Driving Tour brochure printing.

Acceptance was moved by S. Lambert, seconded by L. Koonce, and passed.

Duffields Depot: The commission discussed what could be a possible outcome for the ownership if Duffield's Depot Inc. ceases to exist. The Commission discussed possible outcomes and decided that more research needed to be done before decisions were made.

Peter Burr Farm Event application for 2018: An application was submitted to JC Parks and Rec to hold the Blue Ridge Arts and Crafts Festival on May 8th, 2018 from 10am to 6pm at the Peter Burr Farm. L. Koonce moved to deny application but there was no second. After discussing the application further, the commission decided that it would be best for more questions to be answered before approving or denying the application.

Our History Our Community endowment fund: M. Burke reported pledges of \$20K. He is preparing a request letter and working with local Chamber of Commerce groups to reach out.

WV GeoExplorer Project: (b) (6) Privacy, (b) (7)(C) Enforcement Privacy would be working on technical support for the Kickstarter Project.

EXHIBIT FF - JCHLC 07/12/2017 MEETING MINUTES, PAGE 2

ANNOUNCEMENTS AND COMMISSIONER REPORTS:

- A. Status of NR nomination – (b) (5) Privacy, (b) (1) (C) Enforcement Privacy currently revising draft paperwork with SHPO.
- B. Historic Preservation Zoning Ordinance: M. Burke reviewed at PC public workshop Tues July 11. Draft Zoning Ordinance is currently in a 2-week comment period.
- C. JC Courthouse Committee: L. Koonce stated committee is waiting for a new judge to be appointed before the next meeting would take place.
- D. Concept Plan Reviews: M. Burke working with WV Highway Dept. on the Rte. 340 extension proposal.
- E. Status of NR nomination – *The Rocks*: (b) (5) Privacy, (b) (1) (C) Enforcement Privacy out of town so will update a future meeting.
- F. (b) (5) Privacy Cemetery grant application: Grant received. Stone mason hired. Walls to be relayed in September
- G. Status of grant application to WV Humanities Council: Grant received.
- H. ABPP Grant for PHF, LLC Tracts: Pass-through grant approved. Land Trust for the Eastern Panhandle to hold easement once (b) (5) Privacy house is torn down. (b) (5) Privacy prepared 106 Compliance Report. Title recorded-on June 29, 2017.

S. Lambert made a motion to adjourn, which was seconded by L. Koonce. The motion passed and the meeting was adjourned at 8:39pm.

EXHIBIT GG - JCHLC 12/13/2017 MEETING MINUTES, PAGE 3

Two months ago, [REDACTED] sent a package to [REDACTED] who is still reviewing the material. [REDACTED] is going to remind his father that this is an active project he would like to advance.

e. Status of Roxul - Section 106 review- Horter

Roxul is building a rock wool insulation factory in the Bardane area. Horter attended a breakfast meeting at Hollywood Casino. They are already moving dirt. Their 106 was approved. This is part of the National Preservation Act - any federal undertaking must comply and take into account potential damage to historic resources. Burke is going to call the nearby fruit research station to make sure they're aware of the pollution that will be caused by the new insulation plant.

f. Status of Rte. 340 – MOU with WVDOH – Horter

The MOU was already approved. Because of 106 compliance for the extension of Route 340, the JCHLC will be given funds to pay for National Register research for the affected farms. Submission of the nominations will be based on the research and whether the JCHLC can secure the owners' approval.

g. Status of preservation easement for [REDACTED] farm – Horter

Horter has been going through the information. Burke would insist that any utilities are buried.

h. Status of interpretative projects – Kelly

The courthouse brochure has been printed. Kelly is working on an interpretive panel for the [REDACTED] cemetery by [REDACTED]

i. Status of NR nomination – *The Rocks* – Kelly

Kelly is continuing to work on this between projects.

j. Research on nominating the JC Courthouse as a NHL – Kelly

The NPS says there are no restrictions for NHL owners unless federal funds are being used. Burke will ask the county commission for permission to have the courthouse nominated. Kelly will write a briefing statement explaining the significance of the courthouse and its historic integrity, which will be sent to the NPS for review. NPS will send a representative to determine whether the building is eligible, then a nomination will need to be written. A large amount of research has already been done with [REDACTED] historic structures report.

VI. JANUARY 2018 JCHLC MEEING – CANCELED

EXHIBIT HH - MOUNTAINEER GAS MAP SHOWING A.M.E. CHURCH PROPERTY AS (b) (6) Privacy, (b) (7)(C) Enforcement Privacy

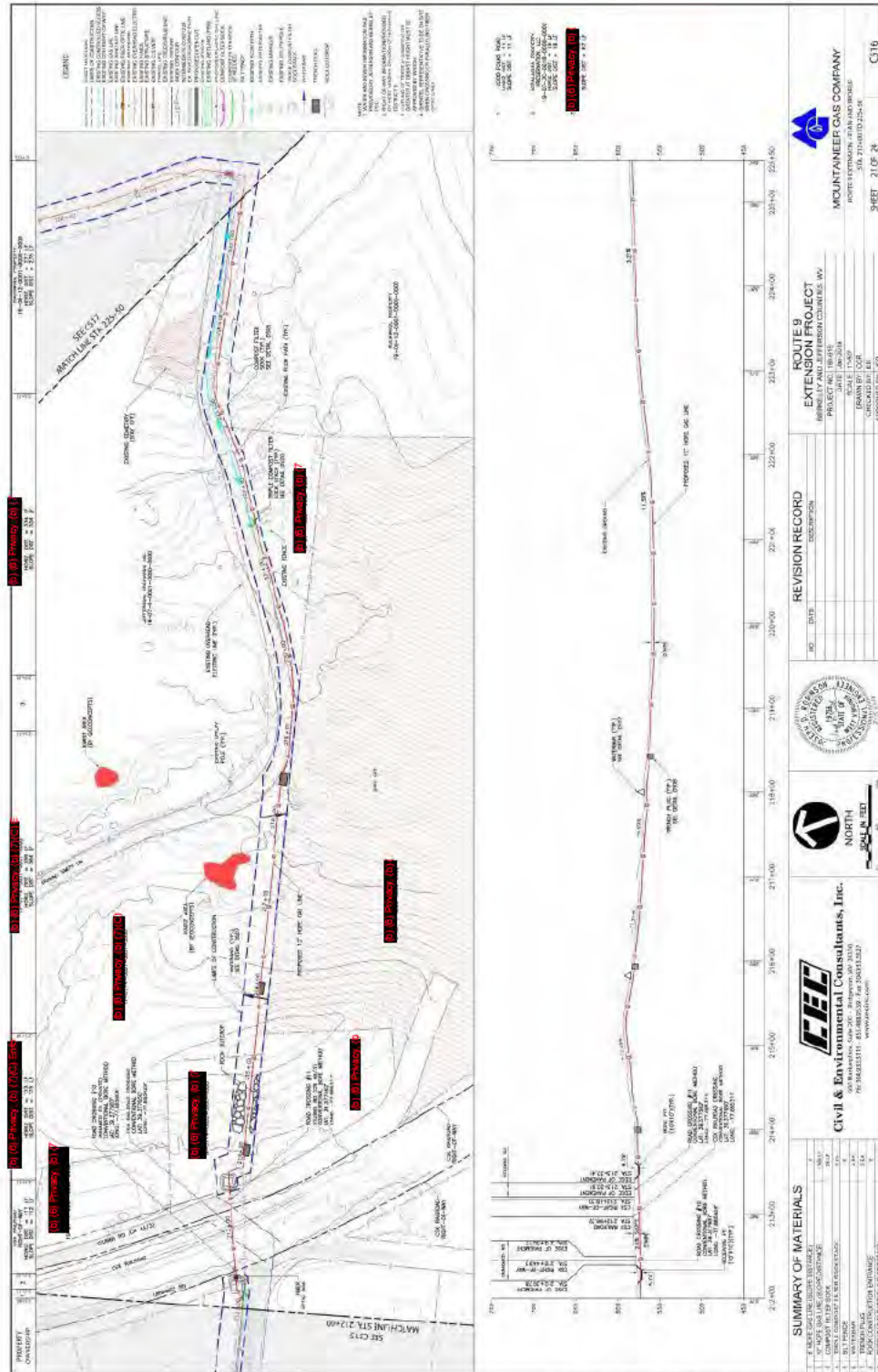


EXHIBIT II - MOUNTAINEER GAS MAP SHOWING A.M.E. CHURCH PROPERTY AS (b) (6) Privacy, (b) (7)(C) Enforcement Privacy - CLOSEUP

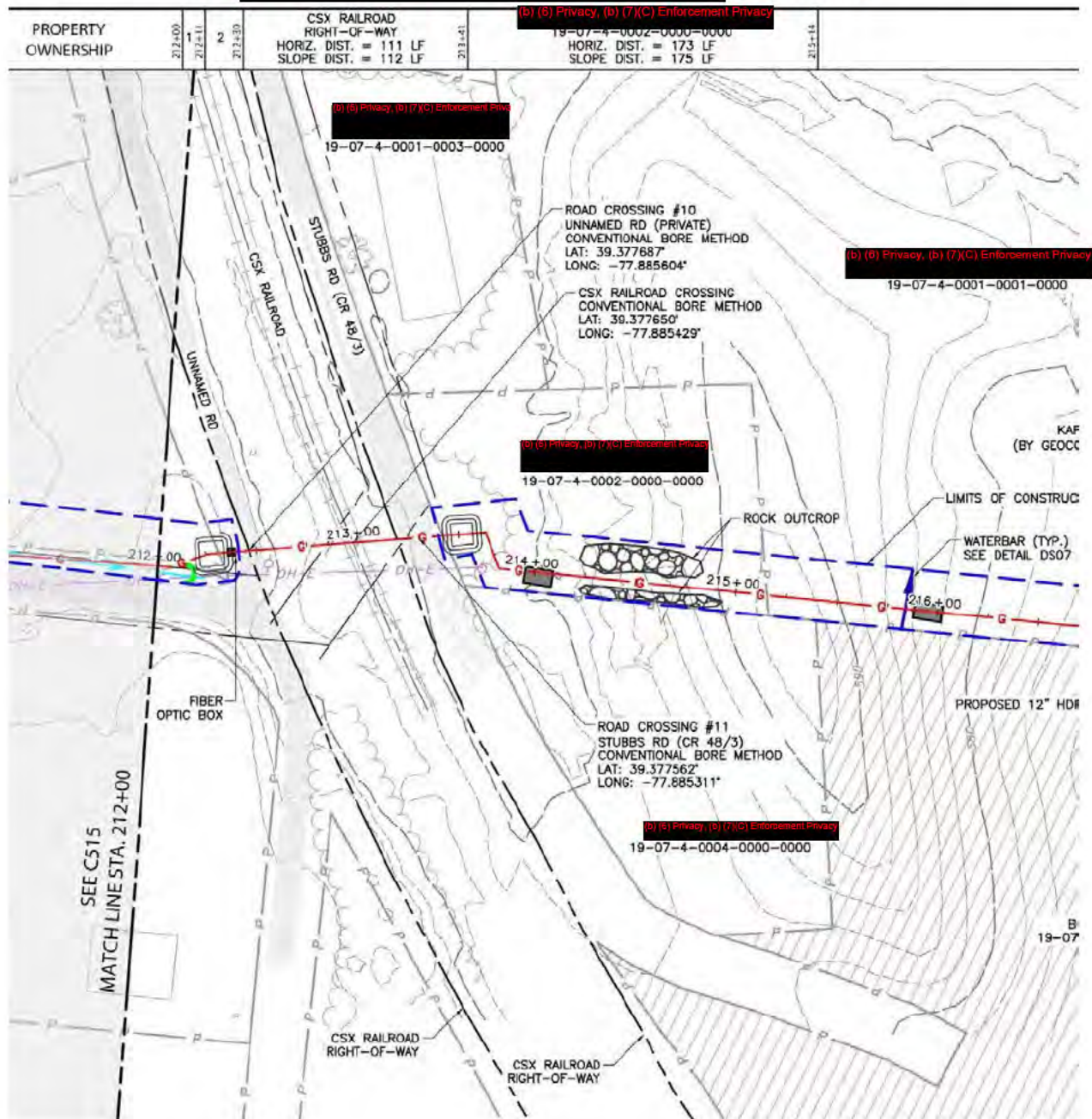


EXHIBIT JJ - (b) (6) Privacy, (b) (7)(C) Enforcement Privacy PROPERTY ACCORDING TO
JEFFERSON COUNTY TAX MAPS

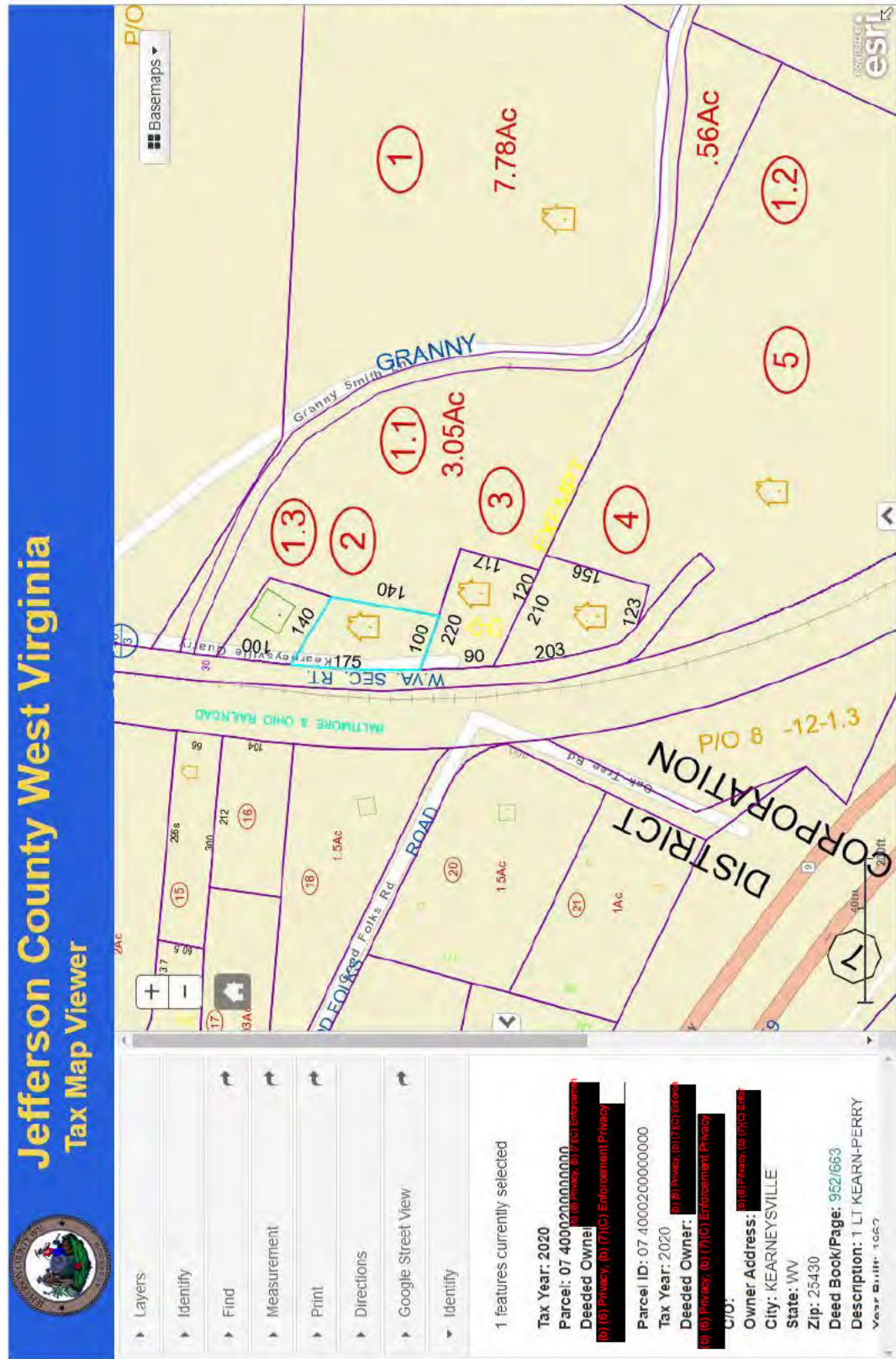


EXHIBIT KK - MOUNTAINEER GAS AND EASEMENT AGREEMENT FOR A.M.E. CHURCH PROPERTY, PAGE 1

6/7/2019

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22404
Jefferson County
Jacqueline C. Staller, Clerk
Instrument 201906033
06/19/2019 @ 01:46:32 PM
RIGHT OF WAY
Book 1221 + Page 278
Pages Recorded 7
Recorder's Fee \$ 35.00
Transfer Tax \$ 158.00
Final Land Tax \$ 73.20

RIGHT OF WAY & EASEMENT

This Right-of-Way and Easement is entered into this 22 day of December, 2018, by **(b) (6) Privacy, (b) (7)(C) Enforcement Privacy** with an address of **(b) (6) Privacy, (b) (7)(C) Enforcement Privacy**, Kearneysville, West Virginia 25430, hereinafter, whether singular or plural, called the "Grantor," and Mountaineer Gas Company, a West Virginia company, with its principal place of business located in Charleston, Kanawha County, West Virginia, hereinafter called "Mountaineer".

WITNESSETH

WHEREAS, the Grantor is the owner of that certain property situated in Middleway District, Jefferson County, State of West Virginia, and identified as Tax Parcel Identification number 19-07-0004-0004-0000 and 19-07-0004-0001-0001, assessed as 1 LT Hartstown and 3 2/3 acres, more or less and as vested in the Grantor by that First and Final Settlement of **(b) (6) Privacy, (b) (7)(C) Enforcement Privacy** recorded on October 12, 2000, Book 135, Page 216, Final Settlement of **(b) (6) Privacy, (b) (7)(C) Enforcement Privacy** recorded January 13, 2015, Book 153, Page 619, Final Settlement of **(b) (6) Privacy, (b) (7)(C) Enforcement Privacy** recorded on 12-14-2018, Book 1221, Page 278, recorded May 26, 1946, Deed Book 172, at Page 467 and recorded June 21, 1963, Deed Book 260, Page 457 of record in the Office of the Clerk of the County Commission of said County (the "Property"); and

WHEREAS, in order to provide its services to and for West Virginia customers, Mountaineer has requested from Grantor this Right-of-Way and Easement for the purposes set forth herein, on and through the Property as set forth herein

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) for a right of way and easement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Mountaineer hereby agree as follows:

Return To: Lori Staller
Mountaineer Gas Company
P.O. Box 5201
Charleston, WV 25301-2201

EXHIBIT KK - MOUNTAINEER GAS AND EASEMENT AGREEMENT FOR A.M.E. CHURCH PROPERTY, PAGE 2

6/7/2019

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GRANT. Grantor hereby grants and conveys to Mountaineer, its successors and assigns, a permanent easement and the exclusive right to construct, lay, maintain, operate, replace, relocate, repair, change the size of, and abandon or remove, drips, valves, measuring and regulating equipment, and other appurtenant facilities necessary or convenient thereto, including, but not limited to, equipment, pigging conduits and telecommunication and/or cathodic protection, for the transportation of natural gas, and other associated fluids on, over, and across the Property

PERMANENT RIGHT-OF-WAY AREA. The right-of-way area shall be Twenty (20'), with Ten (10') generally on each side of the pipeline as more specifically shown on Exhibit "A" attached hereto and made a part hereof by this reference. The pipeline to be laid, together with reasonable, both on and off, right of way ingress, egress, and regress to and from same and the use of any existing roads on the premises for such access. The grant includes the right to clear, cut, trim, and/or remove any and all vegetation, trees, and brush and overhanging branches from the right-of-way by such means that Mountaineer in its sole discretion deems the most expeditious and convenient.

TEMPORARY CONSTRUCTION EASEMENT. In addition to the permanent right-of-way area as set forth above, Grantor conveys to Mountaineer a Thirty (30') temporary easement of an additional work space and adjoining the permanent pipeline right-of-way as shown on Exhibit A, for the purpose of enabling Mountaineer, its employees, agents and/or contractors to initially construct the pipeline and appurtenances or to later relocate the pipeline or lay additional pipeline and to conduct all activities incident thereto, including restoration or clean-up activities.

GRANTOR'S USE OF PROPERTY. Grantor shall have full use and enjoyment of the Property except for the purposes herein granted to Mountaineer. Grantor shall not change the depth of cover over the width of the right-of-way areas defined above, or of any installed pipeline without the written consent of Mountaineer, and shall not place or permit to be placed any temporary or permanent structure or obstruction of any kind, including but not limited to, buildings, mobile homes, trees, fences with posts or foundations, power poles or shrubs taller than five (5) feet at maturity or the like on or over the right-of-way area of any installed pipeline, and shall not store any materials of

Return To: Lori Sheffield
Mountaineer Gas Company
P.O. Box 5201
Charleston, WV 25301-0201

EXHIBIT KK -MOUNTAINEER GAS AND (b) (6) Privacy, (b) (7)(C) Enforcement Privacy EASEMENT
AGREEMENT FOR A.M.E. CHURCH PROPERTY, PAGE 3

6/7/2019

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any kind or operate or allow to be operated any heavy machinery or equipment over the right-of-way area without Mountaineer consent.

MOUNTAINEER'S OBLIGATIONS. It is distinctly understood and agreed that Mountaineer shall be responsible for any damages to persons or property that may result from Mountaineer's negligent or careless installation, use and/or removal of said facilities and/or equipment. Mountaineer shall replace and restore the area disturbed by the activities contemplated hereunder, to as near as practical to its original condition. Where reasonably practicable, all pipe, service connections and/or other appurtenances shall be buried so as not to interfere with the present use of the land.

PAYMENT OF DAMAGES; ARBITRATION. After initial construction, Mountaineer shall pay for or, at its sole discretion, repair damages to livestock, crops, and permitted fences in the event that such damages are caused by its operations. Said damages, if not mutually agreed upon by Grantor and Mountaineer, shall be ascertained and determined by three disinterested persons, one appointed by Grantor, one appointed by Mountaineer, and the third appointed by the two so appointed as aforesaid. Mountaineer shall pay for the cost of its appointee, Grantor shall pay for the cost of its appointee, and the parties shall share the cost of the third appointee. The award and decision of such three persons shall be final and conclusive.

DECLARATION OF CONSIDERATION. Under the penalties of fine and imprisonment as provided by W.Va. Code §11-22-1 and applicable law, Mountaineer declares that the total value of the interest in real property transferred by this agreement is Thirty Six Thousand Dollars \$36,000.00, and, therefore, said transfer is not subject to the State excise tax.

EXHIBIT KK - MOUNTAINEER GAS AND (b) (6) Privacy, (b) (7)(C) Enforcement Privacy EASEMENT AGREEMENT FOR A.M.E. CHURCH PROPERTY, PAGE 4

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WITNESS the following signature(s) and, if applicable, seal(s):

SIGNATURE OF GRANTOR

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

STATE OF WEST VIRGINIA

COUNTY OF Jefferson to wit:

I, Karen K. Olden, a Notary Public in and for said County and State, do certify that (b) (6) Privacy, (b) (7)(C) Enforcement Privacy whose name is signed to the writing hereto annexed, bearing date on the 28th day of December 2018, has this day acknowledged the same before me in my presence.

Given under my hand this 28th day of December 2018.

My commission expires May 30, 2023

Notary Public



EXHIBIT KK - MOUNTAINEER GAS AND (b) (6) Privacy, (b) (7)(C) Enforcement Privacy EASEMENT AGREEMENT FOR A.M.E. CHURCH PROPERTY, PAGE 5

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DEED BOOK				1221		Suffix		278		Suffix						

SIGNATURE OF GRANTOR

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

STATE OF WEST VIRGINIA

COUNTY OF Berkeley to wit:

I, Katherine L. Watson, a Notary Public in and for said County and State, do certify that (b) (6) Privacy, (b) (7)(C) Enforcement Privacy, whose name is signed to the writing hereto annexed, bearing date on the 27 day of December, 2018, has this day acknowledged the same before me in my presence.

Given under my hand this 27 day of December, 2018.

My commission expires May 16, 2020

Katherine L. Watson
Notary Public



EXHIBIT KK - MOUNTAINEER GAS AND (b) (6) Privacy, (b) (7)(C) Enforcement Privacy EASEMENT AGREEMENT FOR A.M.E. CHURCH PROPERTY, PAGE 6

6/7/2019

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SIGNATURE OF GRANTOR

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

STATE OF PA
COUNTY OF CLATSOP, to wit:

I, Susan Laura, Notary Public in and for said County and State, do certify that (b) (6) Privacy, (b) (7)(C) Enforcement Privacy, whose name is signed to the writing hereto annexed, bearing date on the 22 day of Dec 2018, has this day acknowledged the same before me in my presence.

Given under my hand this 22 day of 12, 2018.

My commission expires 4-19-19

Notary Public

Commonwealth of Pennsylvania - Notary Seal
Susan Laura, Notary Public
Clatsop County
My Commission Expires April 19, 2019
Commission Number 1188187

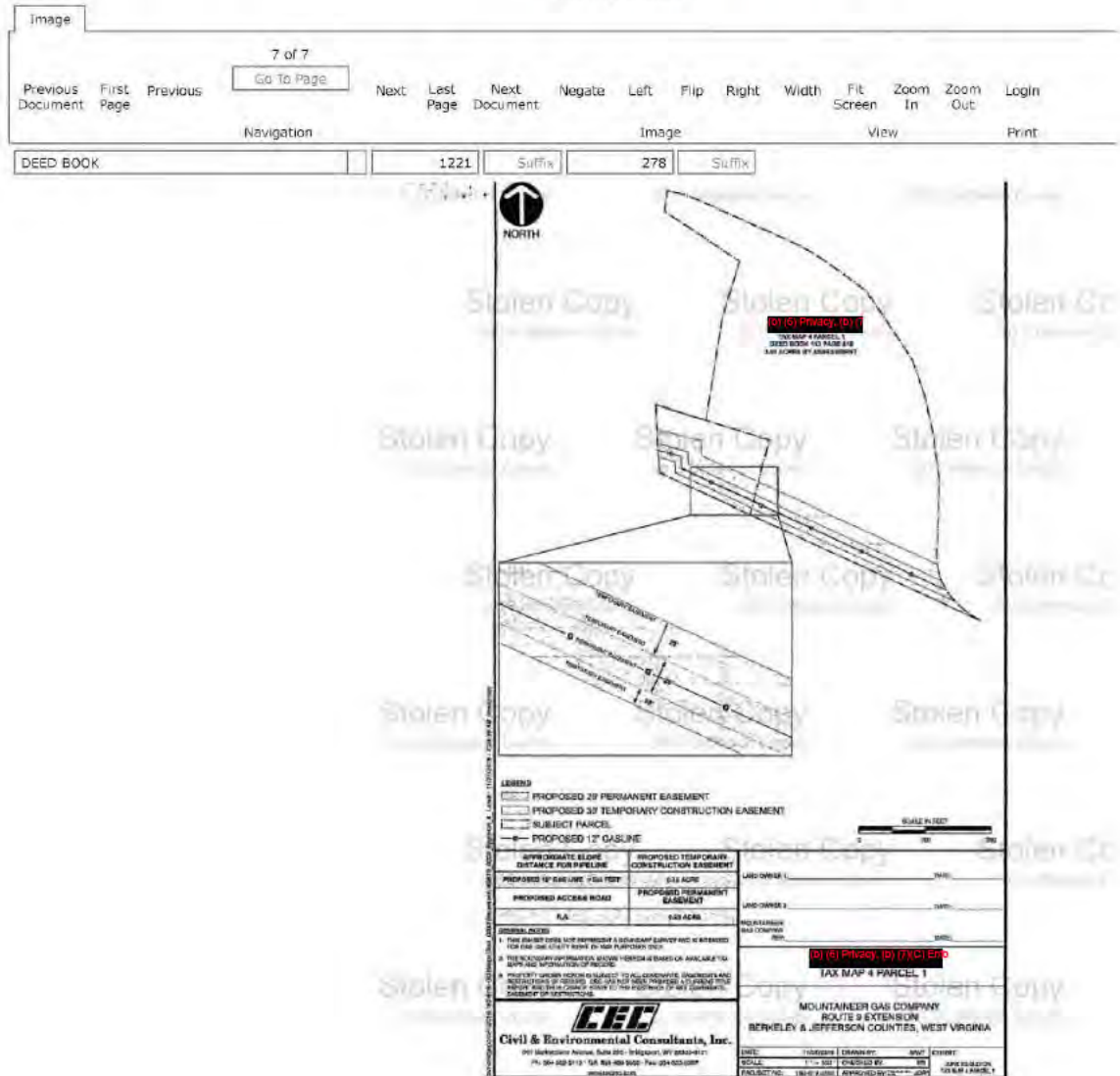
This document prepared by:
Mountaineer Gas Company

Submitted for recordation in the office of the Clerk of the Commission of Jefferson County, West Virginia by _____

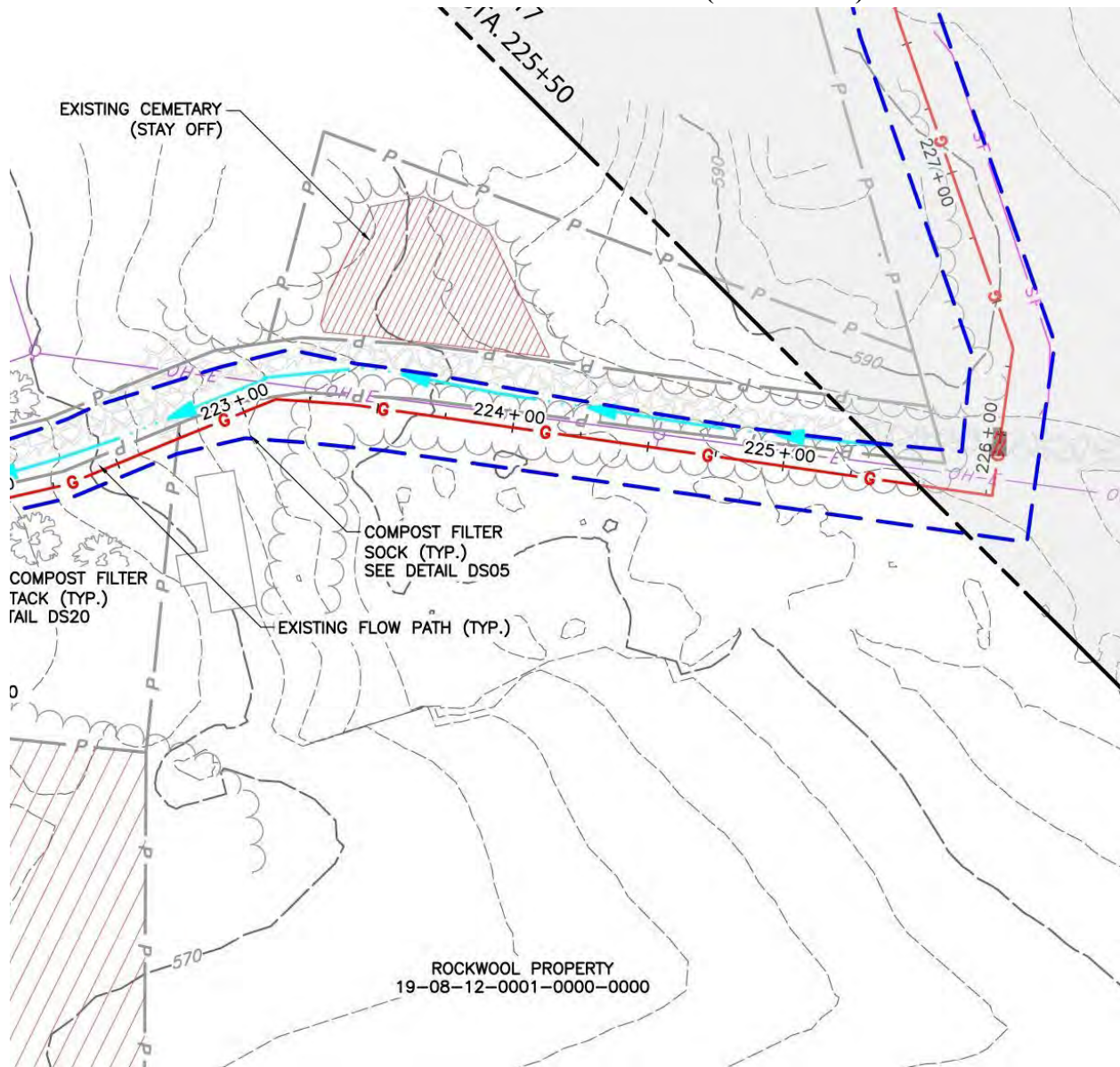
EXHIBIT KK - MOUNTAINEER GAS AND (b) (6) Privacy, (b) (7)(C) Enforcement Privacy EASEMENT AGREEMENT FOR A.M.E. CHURCH PROPERTY, PAGE 7

6/7/2019


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**EXHIBIT LL - MOUNTAINEER GAS' MAPS SHOWING INCORRECT BOUNDARIES
AND SIZE FOR THE CEMETERY (CLOSE UP)**



**EXHIBIT MM - WV DEPARTMENT OF TRANSPORTATION, DIVISION OF
HIGHWAYS, GUIDANCE MEMO ON OIL AND GAS PIPELINE CROSSINGS
OCT. 1, 2018**



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
Division of Highways
1900 Kanawha Boulevard East • Building Five • Room 110
Charleston, West Virginia 25305-0430 • (304) 558-3505

Thomas J. Smith, P. E.
Secretary of Transportation/
Commissioner of Highways

October 1, 2018

MEMORANDUM

TO: ALL DISTRICT ENGINEERS/MANAGERS

FROM: THOMAS J. SMITH, P. E.
SECRETARY OF TRANSPORTATION/
COMMISSIONER OF HIGHWAYS 

SUBJECT: OIL AND GAS PIPELINE CROSSING REQUIREMENTS

This memo will provide additional guidance for preparation of permit requests to construct facilities for pipelines that carry natural gas, petroleum products or other similar materials produced and carried through pipelines, along with the requirements found in the latest edition of the *ACCOMMODATION OF UTILITIES ON HIGHWAY RIGHT OF WAY AND ADJUSTMENT AND RELOCATION OF UTILITY FACILITIES ON HIGHWAY PROJECTS MANUAL*. In any instance where discrepancies exist between this guidance and the manual, these guidelines shall prevail.

A. CONTROLLED/LIMITED ACCESS (CA) HIGHWAYS

1. GENERAL

CA highways include interstates, APD, (Appalachian Development Highway System routes) and any other sections of highway that use fence lines as a means to mark Division of Highways (DOH) Right of Way and to control or limit access. Longitudinal pipeline installations are not permitted within the DOH Right of Way. Coring requests, access to work areas from the travel lane or shoulder, parking, equipment loading or unloading, or material loading and unloading will not be permitted from any travel lane or shoulder of the roadway. No interference with the traveling public shall be permitted. If an unexpected circumstance creates the need for traffic control, then the proper case from the latest edition of

E.E.D./AFFIRMATIVE ACTION EMPLOYER

EXHIBIT MM - WV DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS, GUIDANCE MEMO ON OIL AND GAS PIPELINE CROSSINGS OCT. 1, 2018

MEMORANDUM – PIPELINE CROSSING REQUIREMENTS
October 1, 2018
PAGE 4

Coordination will be required with emergency services, county school systems, local law enforcement, and news media on closure times or expected delays due to construction or detours.

C. CASING

1. GENERAL

It is recognized that a definite policy on the encasement of pipelines must take into account many inconclusive variables, not the least of which is the progressive improvements being made in the pipeline industry for strengthening and protecting carrier pipes. An arbitrary policy of requiring casing for all highway crossings is too expensive for both the utility consumer and the highway user. As an alternative to casing, the Operator or the Operator's contractor may increase the minimum depth of cover in lieu of placing casing, if proper stress calculations are performed. However, if the Operator or Operator's contractor wishes to use this method, they must first obtain approval from the DOH for each location this method is to be used. Casing will only be required in certain locations that the District Engineer/Manager determines are required to maintain the safety of the traveling public.

2. CASED CROSSING DESIGN

For cased road crossings, the calculated wall thickness required for the maximum allowable operating pressure shall be determined using the following:

Liquid Pipeline - 0.72 Design Factor
Class 1 (Gas) - 0.72 Design Factor
Class 2 (Gas) - 0.60 Design Factor
Class 3 (Gas) - 0.50 Design Factor
Class 4 (Gas) - 0.40 Design Factor

The wall thickness shall meet or exceed the Title 49 CFR 192.193 and 195 current requirements for road crossings. DOH will require one class higher than the calculated required thickness for all major road crossings.

3. UNCASED CROSSING DESIGN

For uncased road crossings, the calculated wall thickness required for the maximum allowable operating pressure shall be determined using the following:

Liquid Pipeline - 0.50 Design Factor
Class 1, 2, 3 (Gas) - 0.50 Design Factor
Class 4 (Gas) - 0.40 Design Factor

MEMORANDUM – PIPELINE CROSSING REQUIREMENTS
October 1, 2018
PAGE 5

The wall thickness shall meet or exceed the Title 49 CFR 192, 193 and 195 current requirements for road crossings. DOH will require one class higher than the calculated required thickness for all major road crossings.

D. PERMIT APPLICATION SUBMITTAL

1. GENERAL

An individual crossing permit shall be required for each location at which the pipeline crosses the State Highway Right of Way. The permit for the crossing may include accesses from the State Highway Right of Way on each side of the road within the crossing's limits, only within non-CA right of way areas.

2. PERMIT APPLICATION FORMS

The Oil & Gas Information Data Sheet will contain all information needed for DOH personnel to initiate a new permit in the database. It must include contact personnel for permit questions and for personnel in charge of field construction. All necessary hauling route information will also be included on the Data Sheet.

3. SITE PHOTOS

Photos in the four directions of each entrance/crossing should be included with the submittal. These need to be captioned and have a recognizable land mark shown or referenced in the photo. The proposed site needs to be staked before submitting the permit application.

4. MAP

A site-specific map showing the location of the proposed project should include the hauling routes used. The DOH prefers a portion of the latest County Maps be used for this. When the pipeline crossing is a part of a larger pipeline project with multiple crossing and accesses, it is recommended to provide an overview map showing the centerline of the entire project on the County Maps. This is helpful for the District personnel to plan site and route reviews more efficiently in order to minimize the time needed to approve the permit.

5. PROPOSED PLANS

Plan, profile and cross-sectional views of proposed plans are to be included with each application showing depth of cover and original ground slopes for both sides of the roadway extending at least to the Right of way limits. No access or break of controlled access will be permitted from within the roadway right of way.

MEMORANDUM – PIPELINE CROSSING REQUIREMENTS
October 1, 2018
PAGE 6

When the cut or fill slope is steeper than 2:1, a slope stabilization plan shall be included in the plan submittal.

6. PIPE CALCULATIONS

High pressure pipelines with an operating pressure over 150 psi will be considered individually to determine if they will present a danger to the traveling public. The pipe thickness under the roadway shall be increased 1 class above the calculated required thickness. The pipe wall thickness under the roadway shall be as calculated in C.2 or C.3 above. The application for permits for these lines shall include the operating pressure, the maximum allowable operating pressure and safety calculations signed by a WV licensed Professional Engineer which shall comply with the Title 49 Code of Federal Regulations Part 192.

7. METHOD OF REPAIR

The submitted application shall include a general plan for repair or replacement of this pipeline crossing structure, in case of a leak or defect.

8. TRAFFIC CONTROL PLAN

If traffic control is required, then the proper case from the latest edition of the *MANUAL ON TEMPORARY TRAFFIC CONTROL FOR STREETS AND HIGHWAYS* shall be used, and included with the original application. If an open cut is approved by the District Engineer/Manager, a traffic control plan specifically for an open cut will be included. As a general rule, the DOH would prefer not to detour traffic at a pipe crossing, unless absolutely necessary. Any detour routes used by the Operator will be maintained by the Operator.

E. INSPECTION

The DOH will make every effort to provide proper inspection of the pipeline crossing work with in-house workforce. The Contractor will provide the DOH with as-built notes, plans, or other documentation that verifies the pipeline was constructed at the proper location and grade, unless directed otherwise.

MEMORANDUM – PIPELINE CROSSING REQUIREMENTS
October 1, 2018
PAGE 7

TJS:Mb

cc: SEC, CC, CA, CL, CW, CB, CM, AC, AL, CH, HO, HD, OM

EXHIBIT NN - LONGITUDINAL INSTALLATION OF MOUNTAINEER GAS PIPELINE IN THE DOH ROW ALONG COAST GUARD DRIVE

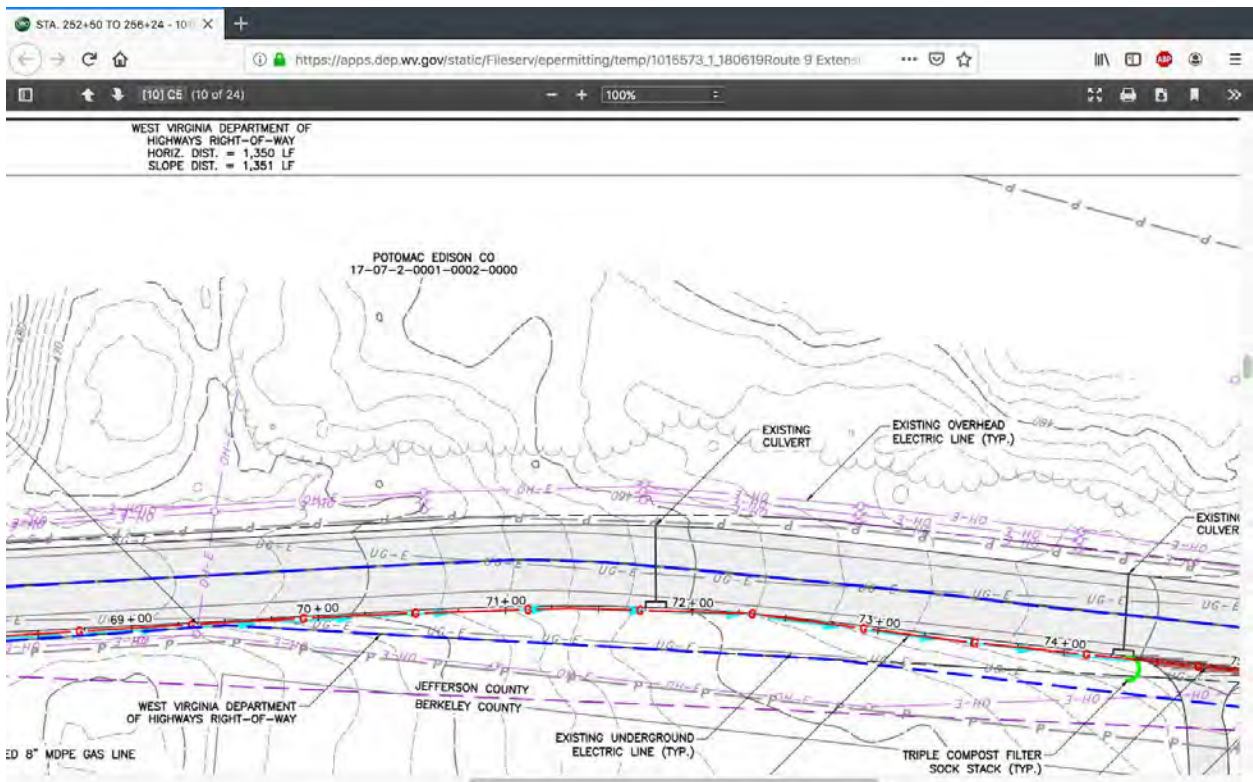
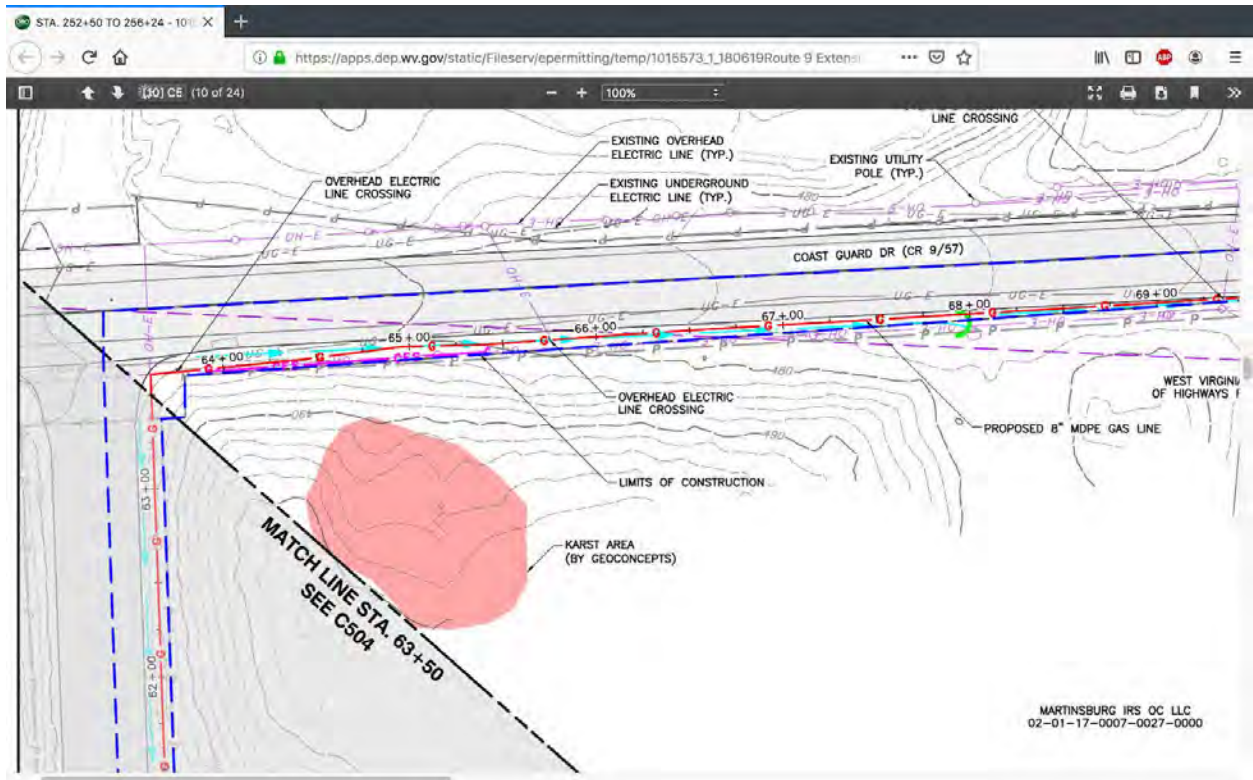


EXHIBIT OO - LONGITUDINAL INSTALLATION OF MOUNTAINEER GAS PIPELINE IN THE DOH ROW ALONG GOOD FOLKS ROAD

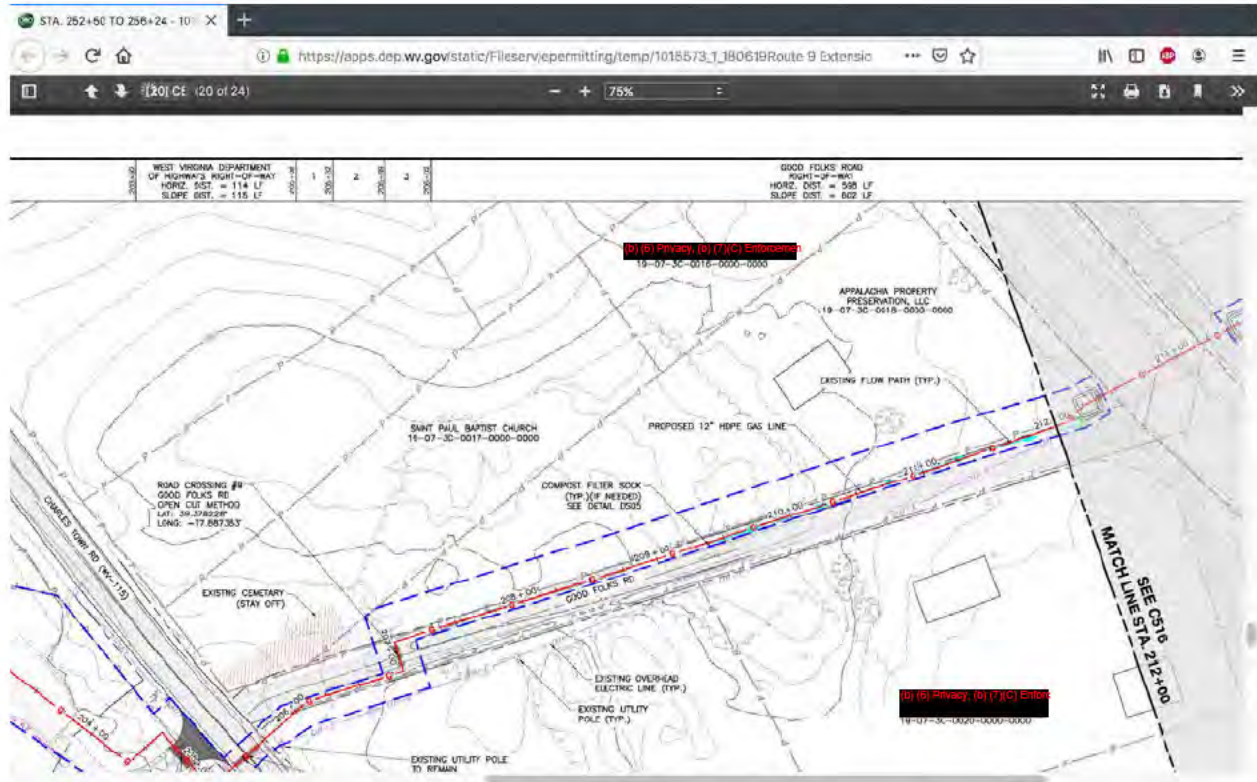


EXHIBIT PP - PUBLIC NOTICE NO. SM-4-2019

State of West Virginia
Department of Environmental Protection
Division of Water and Waste Management
PUBLIC NOTICE and PUBLIC HEARING

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION'S, PUBLIC INFORMATION OFFICE, 601 57TH STREET SE, CHARLESTON, WEST VIRGINIA 25304-2345 TELEPHONE: (304) 926-0440.

APPLICATION FOR COVERAGE UNDER THE GENERAL WEST VIRGINIA WATER POLLUTION CONTROL PERMIT NO. WV0116815

Public Notice No.: SM-4-2019 Public Notice Date: January 25, 2019

Paper: The Journal

The following has applied for coverage under the General WV/Water Pollution Control Permit No. WV0116815 for this facility or activity:

Appl. No.: WVR311281

Applicant: MOUNTAINEER GAS COMPANY
414 SUMMERS ST
CHARLESTON, WV 25301

Location: Near KEARNEYSVILLE, BERKELEY COUNTY

Latitude: 39° 23' 40.1172" Longitude: 77° 53' 59.6034"

Receiving Stream:
Shaw Run/Evans Run/Opasquon Creek/Potomac River

Activity:
The proposed Route 9 Extension Pipeline Project (Project) will disturb 32.64 acres and consists of the installation of approximately 4.93 miles natural gas distribution pipeline in Berkeley and Jefferson Counties, West Virginia, and involves construction of approximately 4.93 miles of natural gas distribution line. The project includes access roads, 17.69 acres entirely within the Department of Highways Right-of-way and 14.95 acres of private Right-of-way (ROW).

Business conducted:
Route 9 Extension

Implementation:
N/A

On the basis of review of the application the "Water Pollution Control Act (Chapter 22, Article 11-6(a)), and the "West Virginia Legislative Rules," the State of West Virginia will act on the above application.

Any interested person may submit written comments on the site registration permit application by addressing such to the Director of the Division of Water and Waste Management within 30 days of the date of the public notice. Such comments or requests should be addressed to:

Director, Division of Water and Management, DEP
ATTN: Sharon Mullins, Permitting Section
601 57th Street SE
Charleston, WV 25304-2345

P189

The public comment period begins January 25, 2019 and ends February 25, 2019. A public hearing has been scheduled from 6 to 8 p.m. on Thursday, February 21, 2019 at:

Ranson Civic Center
431 W. 2nd Ave.
Ranson, WV 25418

The purpose of the hearing is to take comments on the draft permit that will cover the discharge of stormwater during construction activities.

Oral and written comments will be accepted at the hearing. After the public hearing, the comment period will continue until 8 p.m. on Friday, February 25, 2019.

A copy of the draft permit can be obtained by calling Sharon Mullins, Division of Water & Waste Management, (304) 926-0499, ext. 1132; or e-mail her at Sharon.A.Mullins@WV.Gov.

Comments received within this period will be considered prior to acting on the permit application. Correspondence should include the name, address and the telephone number of the writer and a concise statement of the nature of the issues raised. The Director shall hold a public hearing whenever a finding is made, on the basis of requests, that there is a significant degree of public interest on issues relevant to the site registration permit application and this facility's coverage under the General Permit. Interested persons may contact the Public Information Office to obtain further information.

The application may be inspected, by appointment, at the Division of Water and Waste Management Public Information Office, at 601 57th Street SE, Charleston, WV, between 8:00 a.m. and 4:00 p.m. on business days. Copies of the application and the General Permit and Fact Sheet may be obtained from the Division at a nominal cost. Individuals requiring Telecommunication Device (TDD) may contact our agency by calling (304) 926-0493. Calls must be made 8:30 a.m. to 3:30 p.m. Monday through Friday.

P190

EXHIBIT QQ - PUBLIC NOTICE AS IT APPEARED IN THE MARTINSBURG JOURNAL LEGAL ADS, JAN. 25, 2019

State of West Virginia
Department of
Environmental
Protection Division of
Water and Waste
Management

**PUBLIC NOTICE and
PUBLIC HEARING**

WEST VIRGINIA
DEPARTMENT OF
ENVIRONMENTAL
PROTECTION'S
PUBLIC INFORMATION
OFFICE, 601 57TH
STREET SE,
CHARLESTON,
WEST VIRGINIA
25304-2345
TELEPHONE:
(304) 926-0440.

APPLICATION FOR
COVERAGE UNDER
THE GENERAL
WEST VIRGINIA WATER
POLLUTION CONTROL
PERMIT NO. WV0116815

Public Notice No.:
SM-4-2019

Public Notice Date:
January 25, 2019

110 Legal/
Public Notices

Paper: This Journal

The following has applied
for coverage under the
General WV/Water
Pollution Control Permit
No. WV0116815 for this
facility or activity.

Appl. No.: WVR511281

Applicant:
**MOUNTAINEER GAS
COMPANY**
414 SUMMERS ST
CHARLESTON, WV
25301

Location: Near
KEARNEYSVILLE,
BERKELEY COUNTY

Latitude:
38° 23' 40.1172"

Longitude:
77° 53' 59.6034"

Receiving Stream:
Shaw Run/Evans
Run/Opequon
Creek/Potomac River

Activity:
The proposed Route 9
Extension Pipeline Project
(Project) will disturb
32.64 acres and
consists of the
installation of
approximately 4.93
miles natural gas
distribution pipeline in
Berkeley and Jefferson
Counties, West Virginia,
and involves construction
of approximately
4.93 miles of natural
gas distribution line.

The project includes
access roads, 17.69
acres entirely within the
Department of Highways
Right-of-way and 14.95
acres of private
Right-of-way (ROW).

Business conducted:
Route 9 Extension

Implementation:
N/A

On the basis of review of
the application the
Water Pollution Control
Act (Chapter 22, Article
11-6(a)), and the
West Virginia Legislative
Rules, the State of
West Virginia will act on
the above application.

The public comment
period begins January
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The purpose of the
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comments on the
draft permit that will
cover the discharge of
stormwater during
construction activities

Oral and written
comments will be
accepted at the hearing.
After the public hearing,
the comment period will
continue until 8 p.m. on
Friday, February 25, 2019.

A copy of the draft permit
can be obtained by calling
Sharon Mullins, Division of
Water & Waste Management,
(304) 926-0469, ext.
1152; or email her at
Sharon.A.Mullins@WV.gov.

Comments received within
this period will be
considered prior to acting
on the permit application.
Correspondence should
include the name, address
and the telephone number
of the writer and a concise
statement of the nature of
the issues raised. The
Director shall hold a public
hearing whenever a finding
is made, on the basis
of requests, that there is a
significant degree of public
interest on issues relevant
to the site registration
permit application and this
facility's coverage under
the General Permit.
Interested persons may
contact the Public
Information Office to
obtain further information.

The application may be
inspected, by appointment,
at the Division of
Water and Waste
Management Public
Information Office, at
601 57th Street SE,
Charleston, WV, between
9:00 a.m. and 4:00 p.m.
on business days.

Copies of the application
and the General Permit
and Fact Sheet may be
obtained from the Division
at a nominal cost. Individuals
requiring Telecommunication
Device (TDD) may contact our
agency by calling (304) 926-0469.
Calls must be made
8:30 a.m. to 5:30 p.m.
Monday through Friday.

EXHIBIT RR -WVDEP ELECTRONIC SUBMISSION SYSTEM APPLICATION UPLOAD LOGS FOR THE MOUNTAINEER PERMIT³⁸

Applicant: MOUNTAINEER GAS COMPANY

Facility: Route 9 Extension (10/31/2018)

Type: New NPDES/State Storm Water Construction #1

Permit: WVR311281

https://apps.dep.wv.gov/webapp/_dep/securearea/Application/Templates/Objects/objAttachmentsList.cfm?ModuleSeq=0&SecType=Index&application_id=574619


Close

Application Attachments

Section	Description	File name	Uploaded Date	Version	User	CRP?
Sections 9 - 11: Description of Project, Estimates, and Cubic Yards	Project Reduction Narrative	Route-9-Change narrative.pdf	13/29/2019 10:07 AM	0	RizoE50	
Sections 9 - 11: Description of Project, Estimates, and Cubic Yards	LOD, Centerline, and Station CADD file	Route 9 Extension Project-WGS #4.zip	13/29/2019 10:04 AM	0	RizoE50	
Sections 9 - 11: Description of Project, Estimates, and Cubic Yards	LOD, Centerline, and Station File	Route 9 Extension Project.zip	13/29/2019 10:03 AM	0	RizoE50	
Information: Supplemental Information	Chesapeake Addendum	Chesapeake Addendum.pdf	12/15/2019 04:45 PM	1	RizoE50	
Sections 15 - 17: Site Maps and Storm Water Management	SWPPP	180619_SWPPP.pdf	12/15/2019 04:30 PM	1	RizoE50	
Sections 15 - 17: Site Maps and Storm Water Management	Appendix B	Appendix_B_20190219_120619180619_Soil_Report.pdf	12/15/2019 04:29 PM	1	RizoE50	
Sections 15 - 17: Site Maps and Storm Water Management	Erosion/Sediment	180619 Route 9 Extension NPDES Plan Set.pdf	12/15/2019 04:05 PM	1	RizoE50	
Sections 15 - 17: Site Maps and Storm Water Management	Management	MOORESB DETAIL 6.pdf	12/15/2019 04:04 PM	1	RizoE50	
Sections 15 - 17: Site Maps and Storm Water Management	Appendix D	180619 GPP Appendix D.pdf	12/15/2019 04:03 PM	1	RizoE50	
Sections 15 - 14: Relative Time Line, Sediment Controls, and Sequence	Details	MGC FNS DETAIL 6.pdf	12/15/2019 04:01 PM	1	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	Controls	Attachment 13.pdf	12/15/2019 04:01 PM	1	RizoE50	
Sections 5 - 8: Site Information	TOPO Map	Appendix A 180619 0001 FIG1 USGS SITE.pdf	12/15/2019 03:56 PM	1	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	Sinkhole repair plan	Sinkhole Repair Procedure.pdf	11/17/2019 10:53 AM	0	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	SHEET 13 OF 33	180619 Route 9 SHEET 13_20190117.pdf	11/17/2019 10:49 AM	0	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	Section 2.1	Section 2.1-2.2.pdf	11/17/2019 10:34 AM	0	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	SWPPP Section 4.4	section 4.4.pdf	11/17/2019 10:34 AM	0	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	Section 4.1	Section 4.1.pdf	11/17/2019 10:33 AM	0	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	SWPPP Section 2.2	Section 2.1-2.2.pdf	11/17/2019 10:32 AM	0	RizoE50	
Form: Statement For Billing, Class 1	Statement For Billing	201901151819048998.pdf	11/16/2019 04:57 PM	0	RizoE50	
Sections 15 - 17: Site Maps and Storm Water Management	Appendix F	180619_route 9 ext Installation Exhibit.pdf	12/07/2018 05:33 PM	0	RizoE50	
Sections 15 - 17: Site Maps and Storm Water Management	Appendix E	Mountaineer Gas RIEExt Survey.pdf	12/07/2018 05:25 PM	0	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	Sequence	Attachment 14.pdf	12/07/2018 03:00 PM	0	RizoE50	
Certification: Signature Page	Certification Signature Page	DEP_Cert_sign.pdf	12/07/2018 02:00 PM	0	RizoE50	
Section 18: Public Notice Sign	Public Notice Sign	180619 - Public Notice Sign-Figure No.1.pdf	12/07/2018 11:05 AM	0	RizoE50	

³⁸ RizoE50 is an employee of Civil & Environmental Consultants, Inc., the consulting firm used by Mountaineer Gas Company to prepare the Oil & Gas Construction Stormwater Permit Application. He is Mountaineer's designated user of the ESS system for this permitting action.

EXHIBIT SS - WVDEP LETTER GRANTING MOUNTAINEER REGISTRATION UNDER THE GENERAL PERMIT, MARCH 29, 2019

wvdep.org		wvdep.org	
			
West Virginia Department of Environmental Protection			
Division of Water and River Management 601 576 West SE Charleston West Virginia 25304-2345 Phone: (304) 256-0495 Fax: (304) 256-0463		North Carolina, Cabinet Secretary Riparian	
March 29, 2019			
MOUNTAINEER GAS COMPANY Heed Robinson 134 SUMMERS ST Martinsburg, WV 25803		Re: General Permit Registration for WVDEP (1322, Berkeley Co. Route 9 Extension (1001/2018) Area Permitted to be Disturbed (25.38)	
Dear Permittee:			
You are now authorized to operate under General Permit No. WV016813 to discharge stormwater associated with Oil and Gas related construction activities. This registration form should be kept with your copy of the General Permit. You should carefully read the contents of the permit and become familiar with all requirements needed to remain in compliance.			
Although you should be aware of all the terms and conditions of this permit, we wish to advise you of the following important requirements:			
1. In accordance with Section G.4 of the General Permit, you have developed a complete storm water pollution prevention plan. This plan is to be retained on site and be available for review by the Director or the Director's authorized representative as of the date of your coverage by the General Permit, which is the date of this letter.			
2. The erosion control measures approved by this Agency for this project shall be maintained in proper condition to individually and collectively perform the functions for which they were designed. In order to ensure the efficiency and proper maintenance of these measures, the permittee shall make sufficiently frequent, periodic inspections to detect any impairment of the designed utility, capacity or environmental requirements of the approved measures. The permittee shall take immediate steps to correct any such impairment found to exist.			
3. If this Stormwater Pollution Prevention Plan (SWPPP) proves to be ineffective in controlling erosion and the sediment in storm water discharges associated with industrial/construction activities, or site conditions change, the Permittee shall amend the SWPPP and install appropriate sediment and/or control devices in accordance with Section G.4.c. of this permit and the application instructions.			
Promoting a healthy environment.			
Harold D. Ward Acting Director WV DEP-Division of Water & Waste Mgt. 601 576 St SE Charleston, WV 25304-2345 Phone: (304) 926-0495 Fax: (304) 926-0463			

4. The current General Permit expires on March 31, 2024. If you wish to continue an activity authorized by this permit after the expiration date of the permit, provisions for coverage will be made during the public notice process for any new General Permit to be issued at that time.

5. Final stabilization means disturbed areas shall be covered by the appropriate permanent protection. Final stabilization includes: pavement; buildings; stable waterways (ditch, concrete, grass or pipe); a healthy, vigorous stand of perennial grass that uniformly covers at least 70 percent of the ground; stable outer channels with velocity dissipation which directs site runoff to a natural watercourse; and any other approved structure or material.

You will be invoiced for your annual permit fees one month prior to the anniversary date of today's date. Failure to submit the annual fee within 90 days of the due date will render your permit void upon the date you are mailed a certified written notice to that effect. Please be advised that a pro-rated annual permit fee may be assessed upon the completion date and proper stabilization.

Issuance of this registration does not authorize any injury to persons or property or invasion of other private rights, or any infringement of federal, state or local law or rules.

The validity of this General Permit Registration is contingent upon payment of the applicable annual permit fee, as required by Chapter 22, Article 11, Section 10 of the Code of West Virginia.

Issuance of this registration does not authorize any injury to persons or property or invasion of other private rights, or any infringement of federal, state or local law or rules.

Your efforts toward preventing the degradation of our natural resources are greatly appreciated. If you have any questions, please contact Rick Adams at (304) 926-0499 Ext. 1354 or by email at rick.adams@wv.gov.

EXHIBIT TT - CONSTRUCTION FENCE INSTALLATION



EXHIBIT UU - TREE REMOVED FROM THE CEMETERY



**EXHIBIT VV - ACCESS TO CEMETERY BLOCKED BY MOUNTAINEER GAS
PIPELINE CONSTRUCTION**



**EXHIBIT VV - ACCESS TO CEMETERY BLOCKED BY MOUNTAINEER GAS
PIPELINE CONSTRUCTION**



**EXHIBIT VV - ACCESS TO CEMETERY BLOCKED BY MOUNTAINEER GAS
PIPELINE CONSTRUCTION**



EXHIBIT WW - MOUNTAINEER GAS SITE MAP LEGEND

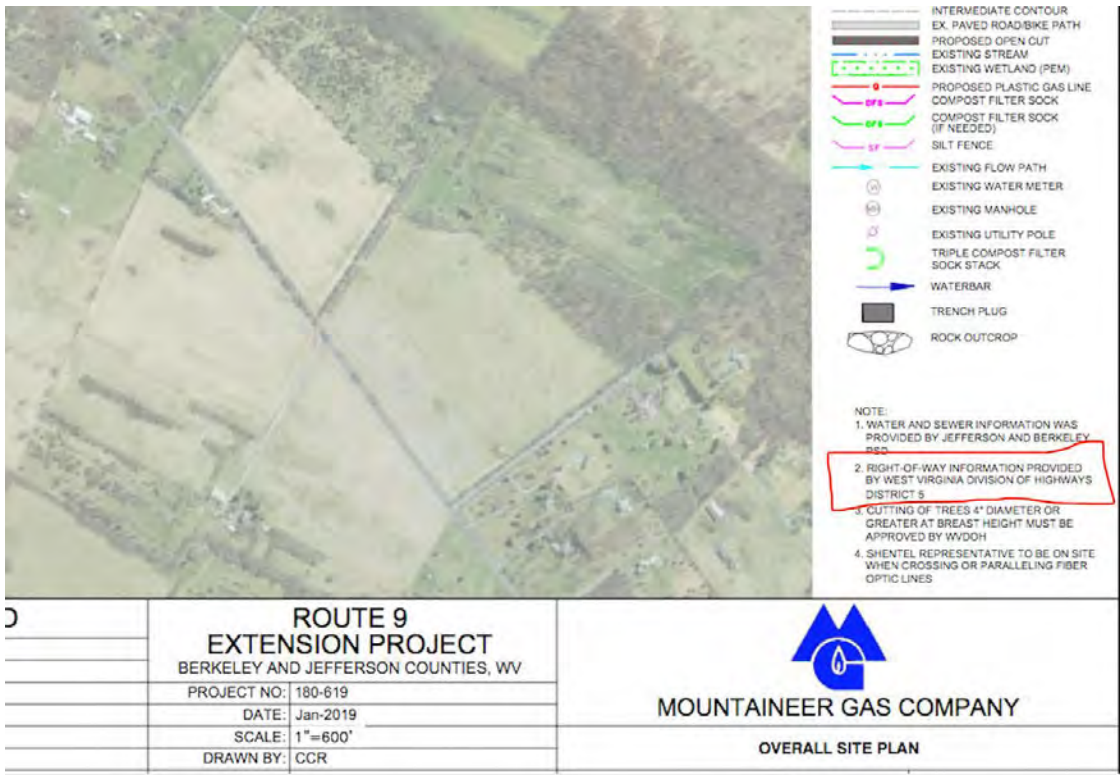


EXHIBIT XX - CONSTRUCTION METHOD FOR EDGE OF ROAD (LONGITUDINAL) PIPELINE INSTALLATIONS

[THIS FIGURE WAS PULLED FROM THE 1/18/2019 WVDEP APPLICATION ON
2/14/2019 AND THE SECOND FIGURE SUBSTITUTED, REMOVING ANY HINT OF
CARS OR TELEPHONE POLES...]

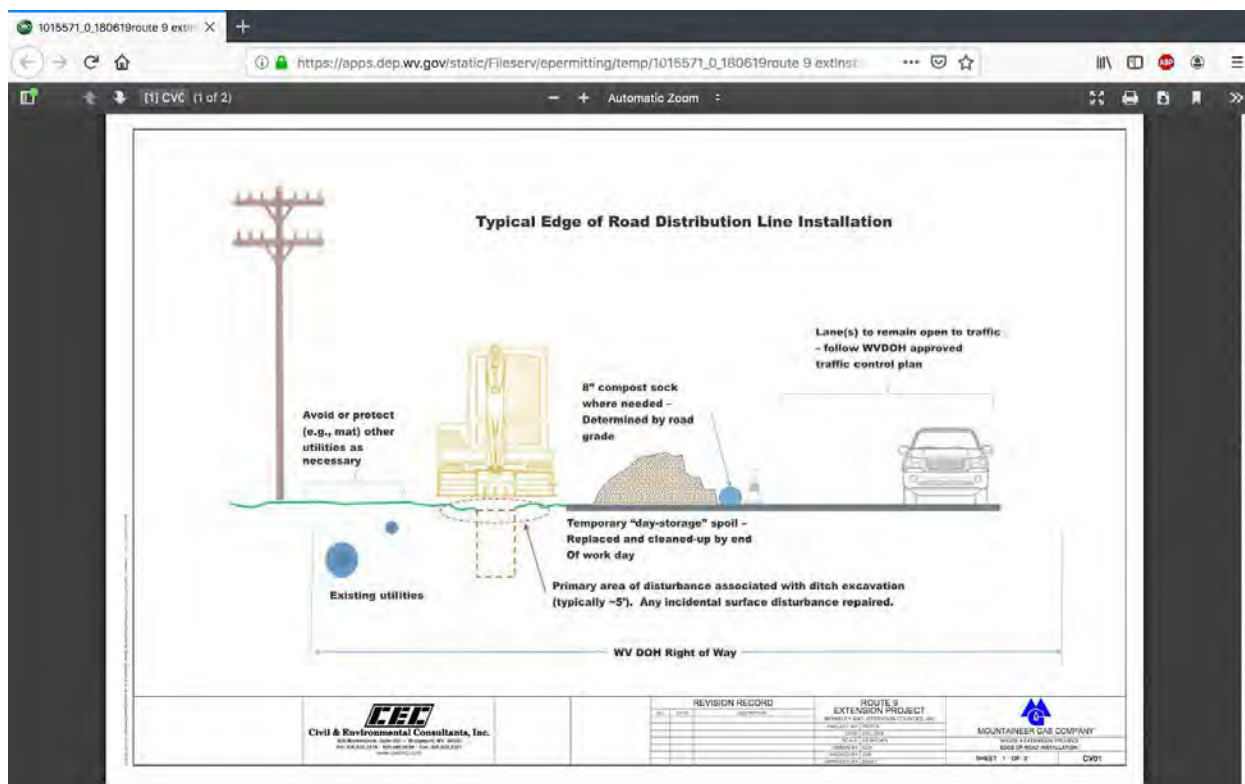
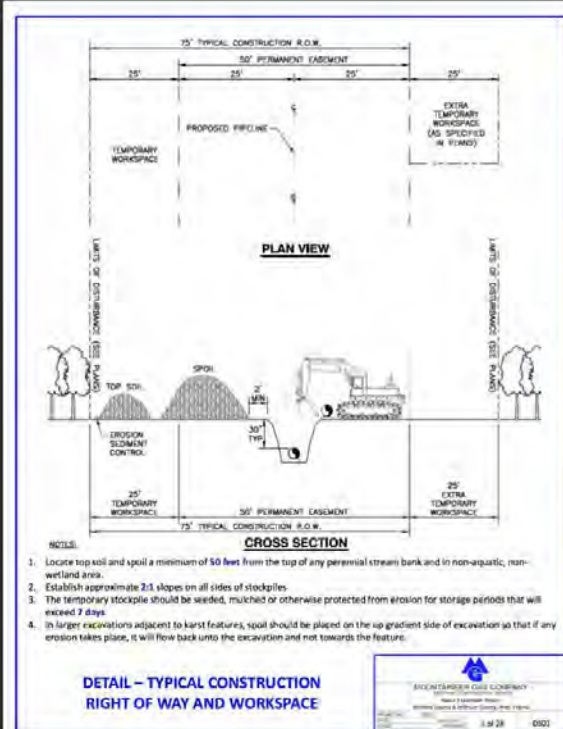
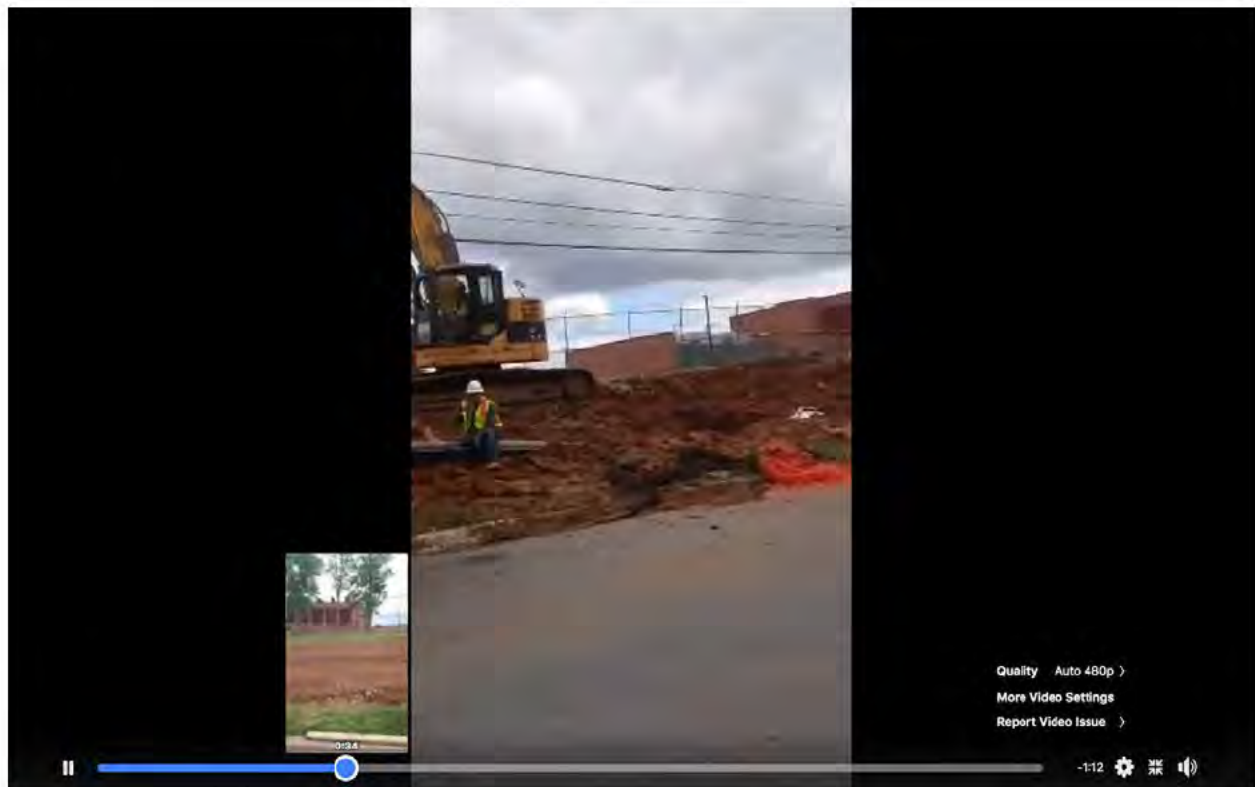


EXHIBIT XX - CONSTRUCTION METHOD FOR EDGE OF ROAD (LONGITUDINAL) PIPELINE INSTALLATIONS

[THIS FIGURE WAS PULLED FROM THE 1/18/2019 WVDEP APPLICATION ON
2/14/2019 AND THE SECOND FIGURE SUBSTITUTED, REMOVING ANY HINT OF
CARS OR TELEPHONE POLES...]



**EXHIBIT YY - MOUNTAINEER GAS PIPELINE BEING INSTALLED³⁹ IN DOH
RIGHT OF WAY (ROAD EDGE--LONGITUDINAL METHOD)
ALONG COAST GUARD DRIVE
MAY 14, 2019**



³⁹ Courtesy of Eastern Panhandle Protectors; full video:
https://www.facebook.com/easternpanhandleprotectors/videos/433060534174174/?epa=SEARCH_BOX

EXHIBIT ZZ - MOUNTAINEER BLOCKING ACCESS TO ROUTE 9 BIKE PATH⁴⁰
MAY 20, 2019



⁴⁰ Notice the lack of a WVDEP-required Construction Stormwater Permit Public Notice Sign.

**EXHIBIT AAA - MOUNTAINEER TRENCHING EQUIPMENT AND PIPE LAYDOWN
MAY 20, 2019**

NOTE: THE EQUIPMENT IS NOT ONLY ON THE BIKE PATH, BUT AT THIS POINT THE BIKE PATH ITSELF CROSSES INTO THE ROW OF THE LIMITED ACCESS HIGHWAY (ROUTE 9)



EXHIBIT BBB - JCHLC 06/18/2019 MEETING MINUTES, PAGE 2

motion which passed unanimously. A vote relating to the final budget will occur at the August meeting, once the Commission knows about the Fairs & Festivals grant and FY-19 carryover.

Resolution for Deed of Conservation Easement: The easement is known as the [REDACTED] [REDACTED] Mrs. Creamer moved to authorize Mr. Burke to sign the easement. Mr. Koonce seconded the motion, which passed unanimously.

Court House Committee: Mr. Koonce reported the committee hadn't met recently. He did ask that the JCHLC request the County Commission appoint someone from the JCHLC or historic preservation community to the newly forming Facilities Committee which is charged with deciding how to rework the first of block of Washington Street.

AmeriCorps Report: [REDACTED] updated the JCHLC about the social media accounts the Commission maintains. She noted Instagram is doing well and Facebook has remained stable. She has also been working on Middleway design standards and noted someone will need to be at the JCHLC table at Middleway Day. Mrs. Creamer and Mr. Koonce indicated they will both be there all day for other efforts and can help out when needed.

Status of National Register Nominations: [REDACTED] was absent but sent a report. The nomination for [REDACTED] farm is awaiting review by the state. The nomination for [REDACTED] is halfway complete.

Status of Zoning and Section 106 Reviews: Mr. Burke reported the site plan for Rocky Ridge development will be voted on at the July Planning Commission meeting. Rocky Ridge house is right next to the proposed development. The house is eligible for the National Register but isn't yet on the County register. Mr. Burke believes increased vegetation will shield the house from the development site. Mr. Horter is preparing a letter to the Planning Commission and developer to that effect. No report on Rt. 340.

Status of Duffields Depot: No changes at present. The JCHLC is waiting on additional funding to continue work. Four windows were donated. The current plan is to brick up one of the entrances, thus returning the building to its 1839 appearance.

Commissioner Comments: Mr. Koonce raised concern about the African American graveyard in Kearneysville that is adjacent to both Rockwool and pipeline construction. Mr. Burke confirmed there is nothing the JCHLC can do, but suggested [REDACTED] be contacted for assistance in gravestone preservation. Mr. Koonce also reported [REDACTED] from the Preservation Alliance of West Virginia will be giving a presentation in August in Shepherdstown about historic movie houses in WV.

Mrs. Creamer moved to adjourn the meeting at 8:14 pm. Mr. Koonce seconded the motion which passed unanimously.

Respectfully submitted,

/s/

H.S. Leigh Koonce, Secretary

Jefferson County Historic Landmarks Commission

EXHIBIT CCC - JCHLC 08/08/18 MEETING MINUTES, PAGE 3

Preservation to fund a topographical survey at Duffields. Horter noted that there are some new railroad grants because of the anniversary of the golden spike and the transcontinental railroad, but he was not certain B&O depots would be eligible. Kelly is also working on moving [REDACTED] Civil War driving tours to a smaller, less expensive format. She is also working on new brochures for the Beeline March and the Morgan's Grove Historic District.

- F. Status of NR nomination – *The Rocks* – Kelly
Kelly is still working on the nomination and will stay in touch with Jeff Smith at the WVSHPO from Texas.
- G. Status of JC Courthouse becoming a NHL – Kelly
Kelly has not heard from Kathryn Smith at the NHL office since the beginning of July. She said to expect a response in 4-6 weeks and that she is hoping to give the commission some good direction as it pursues the nomination. Kelly expects to hear from her soon.
- H. Status of [REDACTED] house demolition – Burke
This project is now in the contractor's hands. The contractor says he can get his equipment up the drive, but River Road keeps flooding.
- I. Report on BZA appeal – Burke
The JCHLC voted to appeal the zoning administrator's decision that section 4.4C of the zoning ordinance was ambiguous and did not apply to the planned development at [REDACTED] Farm. The BZA meeting was Thursday, June 28. Jarred Adams was hired to be the JCHLC's attorney. Most of the attorneys Burke interviewed had a conflict of interest and were associated with either the developer or the lender. Adams filed the motion. The zoning administrator's statement could have been read to apply to all National Register structures, but during the meeting she said that this decision did not apply to all National Register sites. The JCHLC lost the appeal and at this point cannot go to the circuit court.
- J. Status of [REDACTED] Arboretum & Garden Plan – Burke
Burke met with Amanda Harmon, who is still working at [REDACTED] Farm, and is meeting with landscape architect [REDACTED] next week. They will not be presenting to the project to the landmarks commission until September or October.
- K. Selection of new part-time AmeriCorps member – Burke
[REDACTED] will be taking over as the AmeriCorps member with the JCHLC. She will be part-time and shared with Main Street Martinsburg.
- L. Rockwool
[REDACTED] a National Register property, shares a boundary with Jefferson Orchards, but that it will not share a boundary with the Rockwool plant. Burke wants to know if JCHLC would like to issue a resolution/letter stating its opposition to the construction of the factory, because of the visual and sound impacts on nearby historic resources. [REDACTED] responding to a question from Hefestay, explained that the county commission voted on a pilot agreement for Rockwool to lure them to Jefferson County. Once Rockwool chose Ranson instead of the county property, the county commission took no further part.

Koonce moved that a resolution be approved and signed at the next meeting. Horter seconded, and passed.

EXHIBIT DDD - JCHLC 10/10/18 MEETING MINUTES, PAGE 1



Jefferson County Historic Landmarks Commission October 10, 2018 Jefferson County Commission Meeting Room

Members present: Martin Burke, Chairman, H.S. Leigh Koonce, Jack Hefestay, Ben Horter, Tony Troxel.

Guests present: (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Jim Surkamp, (b) (6) Privacy, (b) (7)(C) Enforcement Privacy and three others.

Mr. Burke called meeting to order at 7:04 pm

Public Comment:

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy spoke with regard to his opposition to Rockwool and requested the HLC weigh in regarding the smoke stacks that will be erected.

-Jim Surkamp spoke with regard to Rockwool and highlighted the proximity to the (b) (6) Privacy, (b) (7)(C) Enforcement Privacy property and the Greenback Raid.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy questioned the membership of the HLC and its publication of meeting minutes. She also spoke in opposition to Rockwool.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy spoke against the Rockwool project and highlighted the proximity of her family farm, (b) (6) Privacy, (b) (7)(C) Enforcement Privacy to the project.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy suggested the HLC membership, as County Commission appointed agents, are able to request any documents necessary to make an informed decision relating to their decision-making processes. (b) (6) Privacy, (b) (7)(C) Enforcement Privacy also raised concerns about the Charles Town Presbyterian Church Cemetery and its relocation.

Mr. Burke responded to (b) (6) Privacy, (b) (7)(C) Enforcement Privacy and indicated the property is within a municipal boundary and, thus, not under the jurisdiction of the HLC. Mr. Burke spoke with Seth Rivard, Charles Town City Planner, and Mr. Rivard indicated Charles Town is not taking a position relating to the cemetery.

Mr. Burke introduced Tony Troxel who was appointed by the County Commission to the vacancy created by the resignation of (b) (6) Privacy, (b) (7)(C) Enforcement Privacy.

August Minutes: Mr. Horter moved to approve the minutes as presented. Mr. Hefestay seconded the motion which passed unanimously.

EXHIBIT EEE - JCHLC COURTHOUSE COMMITTEE

f. Changed Appendix C, principal and conditional use table, for villages to allow some commercial uses, this is under the category of adaptive reuse

C. JC Courthouse Committee – Koonce

The courthouse committee has not met since the last JCHLC meeting. Koonce noted that there was a leak due to a burst pipe about two weeks ago but there was no damage to any documents. He also noted that Steve Redding is the sitting judge until the election in May, and his staff can handle any small problems that arise. Burke noted that the final decision on the courthouse windows was to remove the exterior storms and replace them with magnetic interior storms and repair the wood windows. This will greatly improve the appearance of the courthouse.

D. Status of projects at [REDACTED] Farm – Burke

The JCHLC just paid to have the stairs in the barn reorganized. The work was finished on Monday and really opens the space inside. There are several events coming to [REDACTED] Farm. On April 20-21, there will be a 2-day bread-making class, but baking for the public will not begin until May 12. JC Parks & Recreation, with whom the JCHLC has a MOU, has planned 2 events: a wedding and a craft fair. The wedding will take place on April 28. They will be erecting tents on the site and using the barn as a dance area. May 5 is the Blue Ridge Arts and Crafts Fair, and the 60 vendor spots sold out. Koonce asked if the JCHLC has established a plan to monitor the site before and after the events. Burke replied that someone from the JCHLC as well as Parks and Rec will be checking the farm. The JCHLC is due to renew its MOU in May, and the next few weeks will inform both parties about the capacity of the farm for these kinds of events. The JCHLC has also added a loop trail which is maintained by Parks & Rec. The JCHLC is taking on a student intern in Shepherd's Geomatics program who will be in the GIS office working with a local landscape architect. She will plan a 10-year evolution of the JCHLC's 10 acres & the Board of Education adjoining 40 acres to create the [REDACTED] Farm Native Species Park." The site will focus on WV native species. The JCHLC can expect a presentation on the proposed plan at the August meeting.

E. Status of [REDACTED] NR nomination – [REDACTED]

[REDACTED] said the nomination remains in review in Washington, but the JCHLC should hear something this month.

F. Status of Rte. 340 – MOU with WVDOH – Horter

The JCHLC has until the end of May to come up with a plan for the National Register nominations, oral histories, and interpretive plans around Rippon. The WVDOH must approve the plan, and the JCHLC must prioritize the activities. After the money has been sent, the JCHLC has 5 years to complete the projects. Koonce asked if the MOU was voted on, and a review of last year's minutes' show that it was voted on in September 2017.

G. Status of interpretative projects – Kelly



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

September 27, 2019

Return Receipt Requested

(b) (6) Privacy

In Reply Refer to:

EPA File Nos. 03R-19-R3,
04R-19-R3 and 05R-19-R3

(b) (6) Privacy

Winchester, VA 22601

(b) (6) Privacy

Charles Town, WV 25414

Certified Mail #: 7015 3010 0001 1267 1647

Jennifer King

Chair

Rural Agricultural Defenders

Post Office Box 445

Kearneysville, WV 25430

Re: Acknowledgement of Administrative Complaint

Dear (b) (6) Privacy King, Brogna and April:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), received your correspondence on September 24, 2019, alleging discrimination based on race in violation of Title VI of the Civil Rights Act of 1964 involving the West Virginia Department of Environmental Protection (03R-19-R3), the Jefferson County Office of Engineering (04R-19-R3) and the Office of the County Clerk of Jefferson County (05R-19-R3).


ECRCO is responsible for processing and resolving complaints alleging discrimination by programs or activities that receive financial assistance from the EPA. ECRCO will review the correspondence in light of EPA's nondiscrimination regulation to determine whether it is a

Ms. Jennifer King

complaint that falls within ECRCO's jurisdiction. Once this jurisdictional review is completed, ECRCO will notify you as to whether it will accept the complaint for investigation, or reject, or refer the complaint to another Federal agency.

In the interim, if you have any questions about the status of this correspondence, please contact me by telephone at (202) 564-4174 or by email at rhines.dale@epa.gov.

Sincerely,



Dale Rhines
Deputy Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Angelia Talbert-Duarte
Deputy Associate General Counsel
Civil Rights & Finance Law Office

Cecil Rodrigues
Acting Regional Counsel
Deputy Civil Rights Official
EPA Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

September 27, 2019

Return Receipt Requested

Certified Mail #: 7015 3010 0001 1267 1654

In Reply Refer to:

EPA Complaint No: 03R-19-R3

Samuel A. Caperton
Cabinet Secretary
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

Re: Acknowledgement of Receipt of Administrative Complaint

Dear Secretary Caperton:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), received a complaint against the West Virginia Department of Environmental Protection on September 24, 2019.

ECRCO is responsible for processing and resolving complaints alleging discrimination by programs or activities that receive financial assistance from the EPA. ECRCO will review the complaint in light of EPA's nondiscrimination regulation to determine whether it is a complaint that falls within ECRCO's jurisdiction. Once this jurisdictional review is completed, ECRCO will notify you as to whether it will accept the complaint for investigation or reject or refer the complaint to another Federal agency.

In the interim, if you have any questions about the status of this correspondence, please contact me by telephone at (202) 564-4174, or by email at Rhines.Dale@epa.gov.

Sincerely,

A handwritten signature in red ink, appearing to read "Dale Rhines", is positioned above the typed name and title.

Dale Rhines
Deputy Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Angelia Talbert-Duarte
Deputy Associate General Counsel
Civil Rights & Finance Law Office

Cecil Rodrigues
Acting Regional Counsel
Deputy Civil Rights Official
EPA Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

October 17, 2019

Return Receipt Requested

In Reply Refer to:

EPA Complaint Nos. 03R-19-R3
and 04R-19-R3

Certified Mail #: 70153010000112671739
Jennifer King
Rural Agricultural Defenders
Post Office Box 445
Kearneysville, WV 25430

(b) (6) Privacy

Charles Town, WV 25414

(b) (6) Privacy

Winchester, VA 22601

Re: Acceptance of Administrative Complaints

Dear Ms. King, (b) (6) Privacy

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is accepting for investigation an administrative complaint filed against the Jefferson County Commission (JCC) received by the EPA on September 23, 2019. The complaint was filed by the Rural Agricultural Defenders (Complainant) and two individuals, and alleges that the JCC, as well as the Jefferson County Office of Engineering and the Jefferson County Clerk's Office discriminated against African American descendants of those buried at the Boyd Carter Memorial Cemetery in Kearneysville, West Virginia, on the basis of race in violation of Title VI of the Civil Rights Act of 1964, and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7.¹

¹ The complaint referred to the Jefferson County Office of Engineering and Clerk's Office as separate entities. These were separately acknowledged directly to those offices on September 27, 2019. ECRCO has merged the two

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

After careful consideration, ECRCO has determined that the complaint meets the jurisdictional requirements stated above. First, the allegation is in writing. Second, it alleges that discrimination occurred in violation of EPA's nondiscrimination regulation. Third, the alleged discriminatory acts occurred within 180 days of the filing this complaint. Finally, it alleges discriminatory acts by the WVDEP and the JCC, both of which are recipients of EPA financial assistance.

For the WVDEP, ECRCO will investigate the following issues:

1. Whether the WVDEP discriminated against African American descendants of those buried at the Boyd Carter Memorial Cemetery on the basis of race in violation of Title VI of the Civil Rights Act of 1964 and EPA's nondiscrimination regulation found at 40 C.F.R. Part 7,
 - a. During its public involvement process relating to Mountaineer Gas' application for Registration No. WVR311281 under WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities, including, by limiting their participation and providing allegedly misleading information; and
 - b. In its process for approving and approval of Mountaineer Gas' registration under the Stormwater Construction General Permit, which allegedly resulted in the disturbance of graves on the Cemetery grounds; and
2. Whether the WVDEP has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that all recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to the WVDEP's services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with

separate complaints into one using Complaint No. 04R-19-R3 as the file number and naming the Recipient as the Jefferson County Commission, which has budgetary authority over the two offices. As such, Complaint No. 05R-19-R3 is closed as of the date of this letter.

disabilities, and whether the WVDEP has a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.

For the JCC, ECRCO will investigate the following issues:

1. Whether the JCC's (and/or its component agencies: the County Clerk and the Office of Engineering) alleged failure to ensure the veracity of maps and other documentation provided by Mountaineer Gas during the review process for Mountaineer's application for registration under the West Virginia Stormwater Construction General Permit (Registration #WVR311281 under General Permit #WV0116815) discriminated against African American descendants of those buried at the Boyd Carter Memorial Cemetery by allegedly disturbing graves on the Cemetery grounds; and
2. Whether the JCC has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that all recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to the JCC's services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether the JCC has a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.

The initiation of an investigation of the issues above is not a decision on the merits. ECRCO is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with you and the recipients, if appropriate, and determine next steps utilizing ECRCO's internal procedures. In the intervening time, ECRCO will provide the WVDEP and the JCC with opportunities to make written submissions responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving their copies of the letter notifying them of the acceptance of Administrative Complaint #03R-19-R3 and #04R-19-R3. *See* 40 C.F.R. § 7.120(d)(1)(ii-iii).

EPA's nondiscrimination regulation provides that ECRCO shall attempt to resolve complaints informally whenever possible. *See* 40 C.F.R. § 7.120(d)(2). Accordingly, ECRCO will contact the WVDEP and the JCC within 10 days of the date of this letter to provide information about ECRCO's complaint process, and to offer and discuss the informal resolution agreement process with the WVDEP and the JCC as a potential path for resolution of the issues which ECRCO has accepted for investigation. If the WVDEP and the JCC agree to engage in the informal resolution agreement process, ECRCO will suspend its complaint investigation. In the event that the informal resolution agreement process fails to result in an Informal Resolution Agreement between ECRCO and the WVDEP and/or the JCC, ECRCO will notify the WVDEP and/or the JCC as well as the Complainant that ECRCO has resumed its complaint investigation and will issue preliminary findings within 180 days of the start of the investigation – excluding any days

Ms. Jennifer King
(b) (6) Privacy

Page 4

spent in the informal resolution agreement process.²

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with ECRCO.

If you have questions about this letter, please feel free to contact me at (202)564-9649, by email at dorka.lilian@epa.gov, or Jonathan Stein, Case Manager, at (202)564-2088, by email at stein.jonathan@epa.gov, or by mail at U.S. EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.

Sincerely,



Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Angelia Talbert-Duarte
Deputy Associate General Counsel
Civil Rights & Finance Law Office

Cecil Rodrigues
Regional Counsel
Deputy Civil Rights Official
U.S. EPA Region 3

² *See* 40 C.F.R. § 7.115(c).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

October 17, 2019

Return Receipt Requested

Certified Mail#: 70153010000112673177

In Reply Refer to:

EPA Complaint No. 03R-19-R3

Samuel A. Caperton
Cabinet Secretary
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

Re: Acceptance of Administrative Complaint

Dear Secretary Caperton:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is accepting for investigation an administrative complaint filed against the West Virginia Department of Environmental Protection (WVDEP) received by the EPA on September 23, 2019. The complaint was filed by the Rural Agricultural Defenders (Complainant) and two individuals, alleges that the WVDEP discriminated against African American descendants of those buried at the Boyd Carter Memorial Cemetery in Kearneysville, West Virginia, on the basis of race in violation of Title VI of the Civil Rights Act of 1964, and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7.¹

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

¹ ECRCO has opened a related complaint involving the Jefferson County Commission that is being addressed under separate cover.

After careful consideration, ECRCO has determined that the complaint meets the jurisdictional requirements stated above. First, the allegation is in writing. Second, it alleges that discrimination occurred in violation of EPA's nondiscrimination regulation. Third, the alleged discriminatory acts occurred within 180 days of the filing this complaint. Finally, it alleges discriminatory acts by the WVDEP, which is a recipient of EPA financial assistance.

ECRCO will investigate the following issues:

1. Whether the WVDEP discriminated against African American descendants of those buried at the Boyd Carter Memorial Cemetery on the basis of race in violation of Title VI of the Civil Rights Act of 1964 and EPA's nondiscrimination regulation found at 40 C.F.R. Part 7,
 - a. During its public involvement process relating to Mountaineer Gas' application for Registration No. WVR311281 under WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities, including, by limiting their participation and providing allegedly misleading information; and
 - b. In its process for approving and approval of Mountaineer Gas' registration under the Stormwater Construction General Permit, which allegedly resulted in the disturbance of graves on the Cemetery grounds; and
2. Whether the WVDEP has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that all recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to the WVDEP's services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether the WVDEP has a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.

The initiation of an investigation of the issues above is not a decision on the merits. ECRCO is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with the Complainant and the WVDEP, if appropriate, and determine next steps utilizing ECRCO's internal procedures. Generally, the investigation and resolution options and procedures identified in EPA's nondiscrimination regulation and ECRCO's Case Resolution Manual (CRM) will be utilized for the complaint investigation process. We invite you to review ECRCO's Case Resolution Manual for a more detailed explanation of ECRCO's complaint resolution process, available at https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf.

In the intervening time, ECRCO is providing the WVDEP with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving a copy of this letter notifying the

WVDEP of the acceptance of Administrative Complaint #03R-19-R3. *See* 40 C.F.R. § 7.120(d)(1)(ii-iii).

EPA's nondiscrimination regulation provides that ECRCO shall attempt to resolve complaints informally whenever possible. *See* 40 C.F.R. § 7.120(d)(2). Accordingly, ECRCO will contact the WVDEP within 10 days of the date of this letter to provide information about ECRCO's complaint process, and to offer and discuss the informal resolution agreement process with the WVDEP as a potential path for resolution of the issues which ECRCO has accepted for investigation. If the WVDEP agrees to engage in the informal resolution agreement process, ECRCO will suspend its complaint investigation. In the event that the informal resolution agreement process fails to result in an Informal Resolution Agreement between ECRCO and the WVDEP, ECRCO will notify the WVDEP and the Complainant that ECRCO has resumed its complaint investigation and will issue preliminary findings within 180 days of the start of the investigation – excluding any days spent in the informal resolution agreement process.²

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with ECRCO.

If you have questions about this letter, please feel free to contact me at (202)564-9649, by email at dorka.lilian@epa.gov, or Jonathan Stein, Case Manager, at (202)564-2088, by email at stein.jonathan@epa.gov, or by mail at U.S. EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.

Sincerely,



Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Angelia Talbert-Duarte
Deputy Associate General Counsel
Civil Rights & Finance Law Office

Cecil Rodrigues
Regional Counsel
Deputy Civil Rights Official
U.S. EPA Region 3

² *See* 40 C.F.R. § 7.115(c).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

January 31, 2020

Return Receipt Requested

Certified Mail #: 7015 3010 0001 1267 2156

In Reply Refer to:

EPA Case No. 03R-19-R3

Jennifer King
Rural Agricultural Defenders
Post Office Box 445
Kearneysville, WV 25430

(b) (6) Privacy

Charles Town, WV 25414

(b) (6) Privacy

Winchester, VA 22601

Re: Informal Resolution/Tolling of Investigative Timeframe

Dear Ms. King, (b) (6) Privacy

This letter concerns EPA Complaint No. 03R-19-R3, which was accepted October 17, 2019. The U.S. Environmental Protection Agency's (EPA) External Civil Rights Compliance Office (ECRCO) is required by regulation to seek cooperation with recipients in securing compliance with 40 C.F.R. Parts 5 and 7 through informal and voluntary means.¹ The process of developing and executing an Informal Resolution Agreement (IRA) was described to the West Virginia Department of Environmental Protection (WVDEP) during a telephone conversation on January 14, 2020. On January 28, 2020, the WVDEP informed ECRCO that it has agreed to engage in negotiations toward the execution of an IRA. Accordingly, as of January 28, 2020, ECRCO and the WVDEP have commenced informal resolution agreement discussions. ECRCO, therefore, will suspend its investigation and toll the 180-day investigation timeframe in 40 C.F.R. § 7.115(c)(1) for the duration of the informal resolution agreement process. ECRCO will ensure that this process occurs without undue delay.

¹ See 40 C.F.R. § 7.105 (EPA "shall seek the cooperation of applicants and recipients in securing compliance with" 40 C.F.R. Part 7); and 7.120(d)(2) (EPA "shall attempt to resolve complaints informally whenever possible.").

If the informal resolution process fails to result in an IRA between ECRCO and the WVDEP, ECRCO will notify you that ECRCO has resumed its investigation and will issue preliminary findings within 180 days of the start of the investigation – excluding any days spent in the informal resolution agreement process.² During the informal resolution process our office will continue to communicate with you about the status of this complaint. We may also request your assistance in accessing pertinent records or arranging interviews of witnesses. Information thus obtained will be used in drafting a responsive IRA.

If you have questions about this letter, please feel free to contact me at (202)564-9649, or by email at dorka.lilian@epa.gov, or Jonathan Stein, ECRCO Case Manager, at (202)564-2088, by email at stein.jonathan@epa.gov. Either of us may be reached by mail at U.S. EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.

Sincerely,



Lilian S. Dorka
Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

Dianne Esher
Deputy Regional Administrator
US EPA Region 3

Cecil Rodrigues
Regional Counsel
Deputy Civil Rights Official
U.S. EPA Region 3

² See 40 C.F.R. § 7.115(c).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

January 31, 2020

Return Receipt Requested

Certified Mail#: 7015 3010 0001 1267 2149

In Reply Refer to:

EPA Case No. 03R-19-R3

Samuel A. Caperton
Cabinet Secretary
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

Re: Informal Resolution/Tolling of Investigative Timeframe

Dear Secretary Samuel A. Caperton:

This letter concerns EPA Complaint No. 03R-19-R3, which was accepted October 17, 2019. The U.S. Environmental Protection Agency's (EPA) External Civil Rights Compliance Office (ECRCO) is required by regulation to seek cooperation with recipients in securing compliance with 40 C.F.R. Parts 5 and 7 through informal and voluntary means.¹ The process of developing and executing an Informal Resolution Agreement (IRA) was described to Jeffrey Dye of the West Virginia Department of Environmental Protection (WVDEP) during a telephone conversation on January 14, 2020. ECRCO received correspondence from the WVDEP on January 28, 2020, informing our office that the WVDEP has agreed to engage in negotiations toward the execution of an IRA. Accordingly, as of January 28, 2020, ECRCO and the WVDEP have commenced informal resolution agreement discussions. ECRCO, therefore, will suspend its investigation and toll the 180-day investigation timeframe in 40 C.F.R. § 7.115(c)(1) for the duration of the informal resolution agreement process. ECRCO will ensure that this process occurs without undue delay.

If the informal resolution process fails to result in an IRA between ECRCO and the WVDEP, ECRCO will notify the WVDEP that ECRCO has resumed its investigation and will issue preliminary findings within 180 days of the start of the investigation – excluding any days spent in the informal resolution agreement process.² To facilitate the informal resolution agreement process, we will soon be providing you with a draft IRA for review and consideration.

If you have questions about this letter, please feel free to contact me at (202)564-9649, or by email at dorka.lilian@epa.gov, or Jonathan Stein, ECRCO Case Manager, at (202)564-2088, by email at stein.jonathan@epa.gov. Either of us may be reached by mail at U.S. EPA External

¹ See 40 C.F.R. § 7.105 (EPA "shall seek the cooperation of applicants and recipients in securing compliance with" 40 C.F.R. Part 7); and 7.120(d)(2) (EPA "shall attempt to resolve complaints informally whenever possible.").

² See 40 C.F.R. § 7.115(c).

Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, NW,
Washington, D.C. 20460.

Sincerely,



Lilian S. Dorka
Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

Dianne Esher
Deputy Regional Administrator
US EPA Region 3

Cecil Rodrigues
Regional Counsel
Deputy Civil Rights Official
U.S. EPA Region 3

**UNITED STATES OF AMERICA
NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR
OFFICE OF CIVIL RIGHTS**

**UNITED STATES OF AMERICA
ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF CIVIL RIGHTS**

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
DEPARTMENTAL OFFICE OF CIVIL RIGHTS**

**FEDERAL HIGHWAY ADMINISTRATION
OFFICE OF CIVIL RIGHTS**

**THE DESCENDANTS OF THE BOYD CARTER MEMORIAL CEMETERY, and
RURAL AGRICULTURAL DEFENDERS**
Complainants,

vs.

Docket No.

**WEST VIRGINIA STATE HISTORIC PRESERVATION OFFICE; WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION; WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS; DEPARTMENT
OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, WEST
VIRGINIA DIVISION; JEFFERSON COUNTY COMMISSION and ITS
COMPONENTS: JEFFERSON COUNTY HISTORIC LANDMARKS COMMISSION,
JEFFERSON COUNTY OFFICE OF ENGINEERING, and THE OFFICE OF THE
COUNTY CLERK OF JEFFERSON COUNTY**
Respondents.

COMPLAINT PURSUANT TO TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

I. COMPLAINANTS

The Complainants are the African American Boyd Carter Memorial Cemetery (hereinafter called “the Cemetery”), and its descendants; and Rural Agricultural Defenders (RAD). (b) (6) Privacy, (b) (7)(C) Enforcement Privacy are African American descendants of many individuals buried in the Cemetery. Jennifer J. King, Giuliana Brogna, and Susan April are members of Rural Agricultural Defenders, friends of the Cemetery.

The Complainants bring forward this complaint pursuant to Title VI of the Civil Rights Act of 1964 on behalf of the 85 dearly departed occupants of the Cemetery ([Exhibit A](#)) and at least 88 additional deceased individuals whose internment site is located in Kearneysville, WV, but the exact locations are unknown. The majority of these deceased individuals were African American. Not all death records are available (only records prior to 1968 are public) but the remaining individuals are most likely African American due to the familial relationships to other decedents buried in the Cemetery.

This vulnerable, voiceless minority population was adversely affected by the neutral, but more often indifferent, application of policies and procedures by West Virginia State Agencies and Departments beginning in early 2017 and continuing to the present day. The Complainants assert that the African American occupants of the Cemetery have been regularly discriminated against as a consequence of supposedly routine governmental business. The Complainants assert that no substantial legitimate justification for these disparate impacts can be made; time and time again the interests of the well-funded and well-connected few were prioritized above the dignity of the human beings interned in the Cemetery. Furthermore, the Complainants believe that effective alternative practices exist that can lessen the potential for unintended discrimination and this complaint will give the Respondents the opportunity to address diffeincies their policies and procedures that can lead to discrimination, even unintentially, in violation of Title VI of the Civil Rights Act of 1964.

The dead cannot speak for themselves, the living must speak for them.

II. RESPONDENTS

The Respondents are West Virginia State Historic Preservation Office (WVSHPO); West Virginia Department of Environmental Protection (WVDEP); West Virginia Department of Transportation (WVDOT), Division of Highways ; Department of Transportation, Federal Highways Administration, West Virginia Division; Jefferson County Commission (JCC) and its components: Jefferson County Historic Landmark Commission (JCHLC); Jefferson County Office of Engineering, and The Office of the County Clerk of Jefferson County.

The Respondents' actions and inactions in regards to the Cemetery, both directly and indirectly, in the course of government business have severely and adversely impacted the Cemetery. The Complainants do not see intentional discrimination at work, but rather a negative, disparate impact that may be unintended, but nethertheless has discriminating affects on the Cemetery occupants and their descendents.

Regardless if the Respondents explicitly prohibit discrimination in violation of Title VI, the established procedures and policies, and implementation of those policies have allowed various construction activities to proceed unchecked, causing irreparable harm to the Cemetery, its descendants, and African American culture, heritage, and history in Jefferson County WV. This harm is obvious in that the archaeological settings and significance of these burial grounds have been directly affected. The Respondents, who all receive federal funding as demonstrated in the sections below, are required to make every effort to abide by all laws of the Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] and must have the awareness, skills, and training to respect and protect all aspects of a culture's heritage, history, and traditions.

It is unclear to the Complainants whether the harms described herein are the results of collusion on a county, state and national scale or a complete breakdown of Jefferson County and West Virginia State government functioning. The reason why matters little; the Cemetery and it's occupants were left to the mercy of corporations that do not feel obligated to respect the Cemetery and clearly intend to continue construction regardless of the consequences to others.

III. SUMMARY OF TITLE VI COMPLAINTS BY AGENCY

Under Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Complainants submit this affirmative statement within 180 days of the following harms:

- The Section 106 procedure managed by West Virginia State Historic Preservation Office (WVSHPO) was not compliant with Federal Regulations 36 CFR § 800 and 54 U.S. Code § 306101-306131, resulting in an incomplete Section 106 process , and flawed permits that referenced it. Further, West Virginia State Historic Preservation Office (WVSHPO) failed to respond and act upon communications and pleas sent from descendants, historians, and supporters regarding the historic significance of the Cemetery and the need to preserve and protect the Cemetery against construction activities on its borders. The last action by WVSHPO in regards to the cemetery was May 3, 2019.
- Approval of the NPDES/State Stormwater Construction Permit (Permit #WVR311281) for Mountaineer Gas' gas pipeline issued on March 29, 2019 by the West Virginia Department of Environmental Protection (WVDEP).
- Failure of the Jefferson County Historic Landmarks Commission (JCHLC) to comply with WVSHPO procedures and procedures set forth under JCHLC's bylaws which govern recognition and protection of historic areas. Last JCHLC action regarding the Cemetery was June 18, 2019.
- Failure for Jefferson County Office of Engineering to review Mountaineer Gas' gas pipeline route and project. (NPDES/State Stormwater Construction Permit (Permit #WVR311281) issued on March 29, 2019 by the West Virginia Department of Environmental Protection (WVDEP))
- Failure for Jefferson County Clerk to accurately keep land records. Incorrect land records were involved in Mountaineer Gas' gas pipeline route and project. (NPDES/State Stormwater Construction Permit (Permit #WVR311281) issued on March 29, 2019 by the West Virginia Department of Environmental Protection (WVDEP))

IV. THE CEMETERY BACKGROUND

A. About Boyd Carter Memorial Cemetery

The Cemetery is located on Granny Smith Lane in Kearneysville, WV and lies within the Middleway District of Jefferson County. It is a predominantly African American burial ground. The community where the Cemetery is located has been historically called Harts Town. Harts Town was a known African American community and has been well documented in WV State Historic Preservation Office's (WVSHPO) historical surveys, however, it has not been granted a designation of historical significance, protection, or preservation to any to the African American structures, objects and sites in the area.

The Cemetery has been referred to as the Boyd Carter Cemetery, Stewart Chapel Methodist Cemetery, African Methodist Episcopal (A.M.E.) Cemetery, Methodist Cemetery of Kearneysville, and Jefferson Orchards Cemetery. Sometimes the Cemetery is referred to as two separate cemeteries, however, it is one tract of land.

The Cemetery has at least 85 known burials. [\(Exhibit A\)](#) The first known burial in the Cemetery was in 1904 and the most recent burial was in 1999. A December 1902 deed (Deed Book 98, Page 68) called the Cemetery a "burying ground for colored people". [\(Exhibit B\)](#) There are some graves with only markers and no discernible text. There are several United States military war veterans buried there.¹ The Cemetery is a public cemetery and as mentioned within its deed has its own ingress and egress rights to Granny Smith Lane.

A neighboring property deed indicates there could be burials along property boundaries: "this conveyance is made subject to such rights of burial as may exist - it being understood that there may be certain bodies buried in the portion of the land herein described near to and along the northeast line of the old cemetery and the northwest line of the old cemetery." [\(Exhibit C\)](#). A

¹ (b) (6) Privacy, (b) (7)(C) Enforcement Privacy



recent survey performed indeed show many burials outside of the Cemetery boundaries. ([Exhibit D](#)) Only one grave, (b) (6) Privacy, (b) (7)(C) Enforcement Privacy is listed for spatial reference on the recent survey map; however, many more identifiable burials lie beyond the Cemetery property boundaries.

1. Ground Penetrating Radar

Ground penetrating radar was performed on April 3, 2019, which indicates several potential unmarked graves inches from Granny Smith Lane.² ([Exhibit E and F](#)) Some graves have a depth of only 2.5 feet below ground surface.³

With the help of ground penetrating radar and research, grave plotting is underway ([Exhibit G](#)).⁴ More archaeological research is needed to detect burials. As indicated in the report many graves could be depreciated, not within caskets, and vegetation impairments make burials harder to detect with radar:

“We found that the soil allowed for maximum GPR depth penetration of 5’ in areas outside of heavy vegetation. Findings ranged from confirmed potential graves to potential voids. As stated in the limitations, due to the age of many of the graves and the unknown caskets that the deceased were buried in, many of these graves could be extremely depreciated over time. Therefore, minimal voids could indicate the presence of remnants and were marked out accordingly.”⁵

2. Unmarked Graves

From death certificate and grave research, there are at least 85 confirmed burials in the Boyd Carter Memorial Cemetery. ([Exhibit A](#)) Death certificate research indicates an additional

² Ground Penetrating Radar Report

https://drive.google.com/file/d/1rTSOcm2ore0pp0Rgt7UD6BIjkcTCud_e/view?usp=sharing

³ Ground Penetrating Radar Report - page 4

https://drive.google.com/file/d/1rTSOcm2ore0pp0Rgt7UD6BIjkcTCud_e/view?usp=sharing

⁴

https://www.google.com/maps/d/u/0/viewer?fbclid=IwAR1WJENG6cJT6a4B-dwJUtgStgd8EEfGRl-ywbaopukS8FrHE1na7w_z6tk&mid=1qnKO6az5pwhfeLjn3w6nIzzEEcQUZYU&ll=39.37681500000004%2C-77.881969000000003&z=19

⁵ Ground Penetrating Radar Report - page 2

https://drive.google.com/file/d/1rTSOcm2ore0pp0Rgt7UD6BIjkcTCud_e/view?usp=sharing

88 burials with Kearneysville, WV listed as the place for interment. These individuals do not appear in the cemetery inventories of the four cemeteries located in Kearneysville (Caucasian cemetery at the Kearneysville Presbyterian Church, African American cemetery located at St. Paul's Baptist Church, Hart-Lucas African American cemetery located adjacent of St. Paul's Baptist Church's cemetery, and African American Boyd Carter Memorial Cemetery). A cross-reference check was also performed against other known African American and non-segregated cemeteries located in Jefferson and Berkeley Counties.

3. Boyd Carter Memorial Cemetery - Slave Burial Ground

Historical research shows the Cemetery and surrounding properties were owned by slave owners, (b) (6) Privacy, (b) (7)(C) Enforcement & his descendants, the Dandridge's. Jefferson Orchards' (adjacent to the Cemetery property) deed indicates Dandridge ownership. (Exhibit H) From 1763 - 1772, Stephen owned 1,100 acres and 318 acres was used for mostly wheat production and pasturage. In the center of this 318 acres, is where the Cemetery sits today. Historical research indicates the Cemetery and surrounding properties were a burying ground for a hundred years of Stephen's & Dandridge's enslaved. According to U.S. Censuses, through most of the first half of the 1800's, the Dandridge's owned the most enslaved persons ranging from forty to over eighty.

The 1852 S. Howell Brown Map of Jefferson County, WV shows Dandridge land ownership.⁶ (Exhibit I) While mapping technologies have greatly improved since 1852, many property boundaries have remained the same. The (b) (6) Privacy, (b) (7)(C) Enforcement property of today (formerly owned by (b) (6) Privacy, (b) (7)(C) Enforcement) has remained unchanged for over 150 years. We used this property as a point of reference to overlay the current Jefferson County Tax Map with the 1852 map showing Dandridge ownership and the Cemetery location. (Exhibit J) Also, the West Virginia GeoHistory / Geo-Explorer Project: Jefferson County Land Grants map⁷ show Stephen ownership of the Cemetery and surrounding property in 1763. (Exhibit K)

⁶ 1852 S. Howell Brown Map of Jefferson County, WV <https://www.loc.gov/item/2005625308/>

⁷ West Virginia GeoHistory / Geo-Explorer Project Jefferson County Land Grants <http://wvgeohistory.org/portals/0/ESRIJavascriptMaps/GHLandGrants/viewer/index.html>

More research is needed, however, it is possible that since some of the confirmed and unmarked burials have birth dates before 1863, these individuals could have been born into slavery.

Mother Nature and Father Time have taken a toll on the Cemetery. This is not anyone's fault and it is not abandoned as many living descendants still care for the Cemetery. Tree roots have become intertwined with graves. Most of the trees in the Cemetery have been there for years and research shows that slaves often buried their departed in remote areas and non-arable land among trees and underbrush and used trees as burial markers.^{8,9} ([EXHIBIT L and M](#)) . Slaves were forced to bury their loved ones where their masters deemed not worthy for other purposes. The Cemetery has a deep depression and a rock ridge located in the middle of the property which would make this land unworthy of agriculture.

Plantings of yucca, daffodils, and small bushes mark graves.^{10,11} ([EXHIBIT M, N, and O](#)) As is traditional of African American burials, individuals were laid to rest in an east-west orientation. Some of the burials are not only near family members but also arranged in kinship groups. Additionally, there are tokens and symbolic memorials left on gravesites. It is difficult at this time to determine how many of these remnants, memorials, and grave markers are underneath the soil and debris at the cemetery. A phase one cultural resource study could help in identifying resources and defining the site boundaries within the area of potential effect.

Often African American cemeteries' and burial grounds' traditions are misunderstood or disregarded and are labeled as abandoned. The University of Georgia states, "Consequently, these traditions, along with the South's segregated past, has lead [sic] to the negative perception

⁸ "Grave Matters: The Preservation of African-American Cemeteries" by the Chicora Foundation, page 4 <http://www.chicora.org/pdfs/Grave%20Matters%20-%20The%20Preservation%20of%20African%20American%20Cemeteries.pdf?fbclid=IwAR2RIXr7kH3S-fWPvic6vGEfnZsA1I6VMPU5PcxZiltkU3lRe6ja5f5a64c>

⁹ "African American Cemeteries and the Restoration Movement" University of Georgia <https://digilab.libs.uga.edu/cemetery/exhibits/show/brooklyn/african-american-cemeteries-an?fbclid=IwAR3eukiEHFI0w6q2F7488J0UbAhvXKTA328V...>

¹⁰ "Grave Matters: The Preservation of African-American Cemeteries" by the Chicora Foundation, page 5 <http://www.chicora.org/pdfs/Grave%20Matters%20-%20The%20Preservation%20of%20African%20American%20Cemeteries.pdf?fbclid=IwAR2RIXr7kH3S-fWPvic6vGEfnZsA1I6VMPU5PcxZiltkU3lRe6ja5f5a64c>

¹¹ "African American Cemeteries and the Restoration Movement" University of Georgia <https://digilab.libs.uga.edu/cemetery/exhibits/show/brooklyn/african-american-cemeteries-an?fbclid=IwAR3eukiEHFI0w6q2F7488J0UbAhvXKTA328V...>

of Black cemeteries as being abandoned and unkept.”¹² Please note the Anderson Cemetery mentioned in this reference document is not in West Virginia. The Anderson Cemetery is located in Henrico County, Glen Allen, Virginia.¹³

Many old cemeteries are in danger of being destroyed by encroaching economic development projects; however, it is more common that African American cemeteries are removed and erased from history and their communities.¹⁴ The removal of African American cemeteries and burial grounds has become such a problem that new legislation has been introduced to protect these cemeteries and burial grounds.¹⁵

The African American Burial Grounds Network Act, also known as HR 1179, was created by Rep. Alma S. Adams (D-NC) and Rep. A. Donald McEachin (D-VA) to preserve and protect African American cemeteries and burial grounds and African American history.^{16, 17}

Ignorance of a culture’s heritage and traditions is not an excuse for discriminatory actions (or inactions) by government entities. It is the duty of the Respondents to at least respect the variety of cultures and traditions that make the United States a uniquely diverse country. Every effort should be made by all the Respondents to prevent discrimination on the basis of gender, race, color, disability or national origin. The Respondents, being federally funded agencies,

¹² “African American Cemeteries and the Restoration Movement” University of Georgia <https://digilab.libs.uga.edu/cemetery/exhibits/show/brooklyn/african-american-cemeteries-an?fbclid=IwAR3eukiEHFI0w6q2F7488J0UbAhvXKTA328V...>

¹³ “Marker unveiled at historic Glen Allen cemetery”, by the Henrico Citizen, May 14, 2019 <https://www.henricocitizen.com/articles/marker-unveiled-at-historic-glen-allen-cemetery/>

¹⁴ “Gentrification is erasing black cemeteries and, with it, black history” by Christopher Petrella, The Guardian, April 29, 2019, https://www.theguardian.com/commentisfree/2019/apr/27/gentrification-is-erasing-black-cemeteries-and-with-it-black-history?CMP=share_btn_fb&fbclid=IwAR3MpQ3gVHK0h1BuGPhZ81qkcFD3nyu6OtzYqEcqjYCS2PDIGCOq618V-tk

¹⁵ “New Legislation Seeks To Protect Lost African-American Burial Grounds”, by David Anderson, Forbes, Feb 13, 2019, <https://www.forbes.com/sites/davidanderson/2019/02/13/new-legislation-seeks-to-protect-lost-african-american-burial-grounds/?fbclid=IwAR1ZFLlfhyBgFE57zELkKh8iGqTwxFFs7R8BwlMGaQvBs1lRpAWeEqhKAfw#362306685dd8>

¹⁶ “Lawmakers Introduce African-American Burial Grounds Network Act”, By George Kevin Jordan, The Afro, March 9, 2019, <https://www.afro.com/lawmakers-introduce-african-american-burial-grounds-network-act/?fbclid=IwAR3kAbSfnJZRjFyJQVeF4YjqMlme7PORb8AEfy20...>

¹⁷ The African American Burial Grounds Network Act, HR 1179, https://mceachin.house.gov/sites/mceachin.house.gov/files/documents/2019-02-11%20Adams_McEachin%20African%20American%20Burial%20Ground%20Network%20Act_0.pdf

should have the awareness, knowledge, and training to not only recognize African American historical sites but handle them respectfully and appropriately.

4. African Methodist Episcopal Church of Kearneysville Affiliation

The African Methodist Episcopal (A.M.E.) Church has been abandoned since the 1970s but was affiliated with the Cemetery for decades. The deed for the A.M.E. Church shows it was established in 1889. [\(Exhibit P\)](#) The A.M.E. Church has also been called the Stewart Chapel African Methodist Episcopal (A.M.E.) Church. It is located less than 800 feet from the Cemetery. [\(Exhibit Q\)](#)

WVSHPO previously reviewed the A.M.E. Church for the National Historic Register eligibility back in 1996 [\(Exhibit R\)](#) as well as the related A.M.E. Meeting House. [\(Exhibit S\)](#) Both of these structures were decommissioned from Hartstown community use in the 1970's. While the WVSHPO surveys described dilapidated structures, they made no reference to the Church grounds as well as making no recommendations for further archaeological surveys or research. A church, being sacred ground, usually has burials on its property. It was remiss of the surveyor and WVSHPO not to recommend further archaeological research and assessment.

As mentioned previously, 88 death certificates indicate Kearneyville as the interment location. The Complainants believe many of these individuals to be interred at the A.M.E. Church as well as the Boyd Carter Memorial Cemetery. Oral interviews were conducted with (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Cemetery descendants and life-long residents of Kearneysville, and they have recollections of graves and burial ceremonies at the A.M.E. Church decades ago.

It is possible temporary funeral home markers were used at the time of interment instead of more permanent markers or headstones and time, weather, etc. has displaced those markers. Lack of burial plot documentation for the Cemetery and lack of archaeological research on the Cemetery, A.M.E. Church, and Meeting House make burial locations difficult to determine. Many of the African American death certificates in question indicate burials in “M.E. Church of Kearneysville” which could indicate burials at the Cemetery or the A.M.E. Church. By cross checking with other Jefferson County and Berkeley County cemeteries, the Complainants believe

many of these individuals were were laid to rest at the Boyd Carter Memorial Cemetery and the A.M.E. Church.

It is highly likely there are more than 88 unmarked African American graves located in Boyd Carter Memorial Cemetery and A.M.E. Church as the latest burial in Boyd Carter was 1999. For privacy concerns regarding social security numbers, death certificate research can only be performed for deaths up until 1968.

The A.M.E. Church, Meeting House, and its property are currently without guardianship or trustees as the original trustees have been deceased for years and legal provisions have not been established for the property. Some of the original trustees for the A.M.E. Church were also the original trustees for the Cemetery. Further research is needed to identify possible future heirs and/or trustees. To the Complainants knowledge, no legal proceedings have occurred to condemn the property and it has not been taken by eminent domain. To this day, Jefferson County Assessor and Tax information indicates the property is still under a church exemption status.

[\(Exhibit T and U\)](#)

V. RECIPIENT: WEST VIRGINIA STATE HISTORIC PRESERVATION OFFICE

The West Virginia State Historic Preservation Office (WVSHPO) is a division of the West Virginia Department of Arts, Culture and History. WVSHPO states its mission is “to encourage, inform, support, and participate in the efforts of the people of West Virginia to identify, recognize, preserve and protect West Virginia's prehistoric and historic structures, objects and sites.” WVSHPO seems to fill two roles in the Section 106 process; as the SHPO consultant in a subordinate role to the “Agency Official” (as described in 36 CFR § 800.2(a)) leading the Section 106 process on behalf of a federal agency; SHPO also appears to act as the “Agency Official” leading the Section 106 process when a federal agency is not directly involved and historic preservation consultation is required for state level permits. Ms. Susan Pierce is the State Historic Preservation Officer and Director of WVSHPO.

A. Federal Funding

WV SHPO is the recipient of federal grants from the National Parks Service, a Bureau of the United States Department of the Interior. The CFDA program is 15.904 - Historic Preservation Fund Grants-In-Aid, which provides FORMULA grants and PROJECT grants.¹⁸ The Complainants allege that from March 7, 2017 through the present, WVSHPO's practices had a disparate impact on the Boyd Carter Cemetery and its descendants.

West Virginia Department of Arts, Culture and History / WVSHPO Federal Funding 2017 - 2019

Fed. Agency	Action Date	Award ID	Amount
DOI/NPS	07/14/2017	P17AF00018	\$443,207
DOI/NPS	09/05/2017	P17AF00018	\$276,583
DOI/NPS	04/10/2018	P18AF00021	\$357,143
DOI/NPS	06/07/2018	P18AF00021	\$375,816
DOI/NPS	07/02/2019	P19AF00115	\$742,836
DOI/NPS	08/21/2019	P19AP00147	\$24,841

B. Timeliness of Complaint

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving Federal financial assistance must be filed within 180 days after the alleged discriminatory act.

The Complainants argue that May 3, 2019 is the most recent interaction of consequence with WVSHPO regarding the Cemetery. James Surkamp, a Jefferson County resident and local

¹⁸FORMULA grants- Funding to States, Tribes, Territories, the Freely Associated States, the District of Columbia, Certified Local Governments, and other applicants as defined by Congress, to assist in the identification, evaluation, and protection of historic properties by such means as education, survey, planning, technical assistance, preservation, documentation, and financial incentives like grants and tax credits available for historic properties.

PROJECT grants- Funding to eligible grantees to provide for the identification, evaluation, and protection of historic properties as defined by Congress.

historian, sent WVSHPO an historical review of the area now known as Jefferson Orchards where the Rockwool Ranson facility is currently under construction. WVSHPO received his report on May 3, 2019. ([Exhibit V](#)) This report, which cited census reports, Jefferson County land maps, tax records and other publicly available documentation, laid out a robust argument for the historical significance of the site that includes the Cemetery. WVSHPO never responded to this communication, essentially refusing to initiate the “Post-Review Discovery” process as described in 36 CFR § 800.13. This negligent action is described below.

The 180 day limitations period ends October 30, 2019. This complaint was sent by FedEx Overnight Priority to Director, Office of Civil Rights, Department of the Interior, 1849 C Street, NW, Washington, DC, 20240 on September 23, 2019.

C. Background

WVSHPO has known of the existence of the Cemetery for many years. Unfortunately, due to inaccuracies included on the 2005 WV Cemetery Survey Form for the Cemetery, much of the information in WVSHPO’s possession about the Cemetery is incorrect. For example, under “Burial Population”, graves were noted to be “Euro & African American”. ([Exhibit W](#)). Even more egregious, the survey notes only 53 known burials; there are 32 additional burials visible on the ground and in the historic record. The 2005 survey also incorrectly claims that “Some caskets appear to have been removed.”; however, this is an unsubstantiated statement as there is no evidence or known reason for burial removals at the time or prior to this survey.

The Complainants argue that WVSHPO was filling the role of “Agency Official” in the Section 106 process as no federal agency was involved. There were many points throughout the 15 months process that WVSHPO could have acted as a protective advocate not only for the Cemetery, but for at least three near-by properties listed on the National Register of Historic Places ((b) (6) Privacy, (b) (7)(C) Enforcement) Farm, ((b) (6) Privacy, (b) (7)(C) Enforcement) Farm, and ((b) (6) Privacy, (b) (7)(C) Enforcement). WVSHPO failed in its responsibility to properly manage the Section 106 process as an advocate for historic places, causing the Cemetery, among other properties, to suffer a disparate impact from the construction activities at the Rockwool site.

The majority of research used in this complaint was obtained by a Freedom of Information Action request to WVSHPO filed August 28, 2018 by Jefferson County Vision. Extracts of this large FOIA returned are included as exhibits. Mr. James Surkamp provided historic research resources.

D. Discriminatory Acts

a. WVSHPO incorrectly assumes the Cemetery is not in the direct footprint of Rockwool construction activities. This action violates 36 CFR § 800.4(a)(1) which specifies that the Area of Potential Effect must be determined and 36 CFR § 800.4(b)(1) which requires the agency official to “make a reasonable and good faith effort to carry out appropriate identification efforts”.

The Complainants argue that WVSHPO neglected to follow federal regulations governing the Section 106 process initiated by ERM, Inc. on behalf of the Jefferson Orchard Project (Project FR# 17-437-JF, AKA “Project Shuttle”, “Granny Smith Lane, Kearneysville”, “Rockwool”, “Roxul”) on March 7, 2017 ([Exhibit X](#)). In a reply letter ([Exhibit Y](#)) sent April 3, 2017, Susan Pierce, Deputy State Historic Preservation Officer, noted the Cemetery’s presence immediately adjacent to the project site (Cemetery WV SHPO ID #46JF507). She notes that the Cemetery had not yet been evaluated for inclusion on the National Register of Historic Places (NRHP), but critically and incorrectly assumes that the Cemetery is not in the direct footprint of the project area, and will therefore only need to be evaluated for viewshed effects (“Indirect effects” per Section 106) if deemed eligible for the NRHP. Ms. Pierce erred earlier in this same letter by suggesting, without evidence or consultation with ERM, Inc. that a viewshed evaluation anticipating a 2-3 story building would be adequate.

Ms. Pierce was not aware of and made no attempt to be aware of a number of marked and unmarked graves that lay outside the Cemetery property line. Surveys and assessments over the next year and a half also failed to note that these graves are situated on Rockwool’s property and therefore directly in the footprint of the project area ([Exhibit D and E](#)). This wrong assumption remained a “fact” for WVSHPO even after they had signed off on the project (Approval letter is

estimated to have been delivered around June 25-July 4, 2018, Complainants do not have an email or letter evidence).

In an email dated August 21, 2018, ([Exhibit Z](#)), Carolyn Kender, an archaeologist employed by WVSHPO, claimed “It is our understanding that the Jefferson Orchard Cemetery [the Cemetery] will not be impacted by the project’s construction activities”. WVSHPO relied on assessments done by consultants to deem the Cemetery ineligible for inclusion on NRHP, and as it never acknowledged that some graves were outside of the property line, how could WVSHPO have possibly determined that the Cemetery would be unaffected by construction?

It is the Complainants understanding that WVSHPO guidelines do not consider cemeteries as eligible for NRHP unless someone of historical significance is buried there. How could WVSHPO and their consultants have made this assumption with an incomplete 2005 burial inventory which never was given a second look or assessment? Again, there are 32 more easily identifiable confirmed burials than the 53 that was listed on the 2005 burial inventory.

Rockwool¹⁹ stormwater construction plans approved by the WVDEP reveal their intention to construct an emergency access road next to the Cemetery; on the road currently named Granny Smith Lane. ([Exhibit AA](#)) An easement agreement made between Rockwool and Jefferson Orchards, Inc. filed in the Jefferson County Courthouse (deed book 1197 page 680) also reveal their intentions for said emergency access road. ([Exhibit BB](#))

Granny Smith Lane currently is a gravel, single-vehicle width road. The emergency access lane is required to be at least 12 feet wide, which implies that Granny Smith Lane will need to be widened, threatening the graves laying outside the Cemetery boundaries on Rockwool property. There are marked graves as well as unmarked graves detected by ground penetrating radar within this area. ([Exhibit E and F](#)) Some of these graves lay 6 inches from the road and are critically threatened.

It is unclear how the Cemetery would have been treated differently if WVSHPO correctly noted that graves lie outside the Cemetery boundaries on Rockwool property. It is also unclear how this portion of land containing these graves could have been sold to Rockwool. The Complainants argue that due to WVSHPO’s negligent assumption that the Cemetery was not

¹⁹ Roxul dba Rockwool is tracked through the entire WVDEP permitting system as the entity Roxul.

included in the direct footprint of construction activity, and the fact that WVSHPO, various consultants and Rockwool, made no attempt to correct this wrong assumption; the occupants of the Cemetery and the Descendants have been disparately impacted by the disturbance to the Cemetery's archaeological significance from the construction activities of Rockwool and the Mountaineer Gas Pipeline and threat of exhumation to make way for the emergency access lane.

b. WVSHPO incorrectly requested Section 106 public comment from Jefferson County Historic Landmarks Commission (JCHLC). The Rockwool project is located in Ranson, WV therefore the request for public comment should have been addressed to City Council of Ranson, WV. This violated 36 CFR § 800.3(e) requiring a plan to inform the public of the undertaking.

There appears to be confusion over what government entity has authority to make public comments for this project. The entirety of the Rockwool project is located in the jurisdiction of Ranson, not the Middleway District of Jefferson County as was put forth by ERM, Inc. when the Section 106 process was initiated and continued to be incorrectly located in Middleway in subsequent communications and reports. The request for Section 106 public comments should have been sent to Ranson City Council in addition to the JCHLC, which had jurisdiction over three nearby NRHP properties and the Cemetery.

In the JCHLC October 10, 2018 meeting minutes ([Exhibit CC](#)), “[REDACTED] suggested the HLC membership, as County Commission appointed agents, are able to request any documents necessary to make an informed decision relating to their decision-making processes.” “Mr. Burke responded to [REDACTED] and indicated the property [Rockwool] is within a municipal boundary [Ranson, WV] and, thus, not under the jurisdiction of the HLC.” The suggestion is made that “Once Rockwool chose Ranson instead of the county property, the county commission took no further part [in the process].”

It is fair to assume that Ranson is responsible for monitoring historic places within its jurisdiction. Under the Section 106 regulations, 36 CFR § 800.2(c)(3) - Participants in the Section 106 process: “Under other provisions of Federal law, the local government may be authorized to act as the agency official for purposes of section 106.” However, Ranson does not

have a committee or council dedicated to historic landmarks in its jurisdiction. In this case, the Section 106 request for public comment for the Rockwool project should have been addressed to the City Council of Ranson. Rockwool had been working intimately with the City of Ranson and knew well that their property was located in Ranson, why was this error not addressed by Rockwool or its contractors?

Since JCHLC denies responsibility for evaluating this particular property and provided no comment, and the municipality in which the property is located does not have an established entity to provide comments on historic places, and no effort was made by WVSHPO or ERM, Inc. to contact Ranson, **then it is logical to conclude that the Section 106 requirement for public comment was not met.**

Regardless of the jurisdiction confusion regarding the Rockwool property, which is indeed located in Ranson, WV, the Cemetery is located in the Middleway District of Jefferson County, and falls within the purview of the JCHLC. The JCHLC therefore neglected their responsibility to evaluate the Cemetery when they incorrectly assumed that none of the aspects of this project were within their authority to evaluate.

The fact that the public was not informed, not even through a governmental body charged with handling historic properties within their jurisdiction, certainly violates 36 CFR § 800.3(e) requiring a plan to inform the public of the Section 106 undertaking. Although SHPO did make a plan, the plan was faulty from inception and destined to never be seen by the public.

c . WVSHPO did not receive public comment for the Section 106 process in violation of 36 CFR § 800.2(d)(2)(2). Further, it is unclear if Jefferson County Historic Landmark Commission (JCHLC) received the letter requesting public comment.

Regardless that the City of Ranson should have been contacted to provide public comment for the area within their jurisdiction, there was no reply or public comment from the agency that was solicited for comment, JCHLC. This violates 36 CFR § 800.2(d)(2)(2) which requires that the public be informed about an undertaking and its effects on historic properties. “The agency official must, except where appropriate to protect confidentiality concerns of

affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input.”

In WVSHPO’s April 3, 2017 reply letter ([Exhibit Y](#)) to ERM, Inc. which initiates the Section 106 Process, special mention is made that Federal regulations require public comment. WVSHPO also requires that ERM, Inc. specifically contact the Jefferson County Historic Landmark Commission (JCHLC) and request comment on the project. In this letter, the Cemetery (WVSHPO ID# 46JF507) is specifically mentioned as a potential historic place that requires evaluation for inclusion on NRHP.

A July 24, 2017 reply letter ([Exhibit DD](#)) to WVSHPO from Paige Gardner of The Thrasher Group, Inc. (A sub-consultant hired to perform the Phase 1 Archaeological Survey), supplies a copy of the letter sent on June 5, 2017 ([Exhibit EE](#)) to JCHLC requesting public comment. There are three NRHP properties that are listed on this letter, but the Cemetery is NOT listed nor is its ID number given. It is impossible to know if the Cemetery was purposely excluded from this letter, however, its exclusion certainly would have made evaluation of the Cemetery by the JCHLC unlikely.

Ms. Gardner reports that she received no comments or communications in response from JCHLC within 30 days. It appears that no other attempts were made to contact the JCHLC regarding this project. In the digital era we live in, it must be asked why contact via e-mail or telephone was not attempted. Both an email address (landmarkscommission@jeffersoncountywv.org) and a telephone number (304-728-3195) are listed on the JCHLC website. Why didn’t Ms. Gardner try to make contact through another method?

Regardless of the reason, the result was that no public comments were received from JCHLC. It appears that WVSHPO accepts this singular contact attempt as satisfying the requirement for public comment as they made no response to the July 24th letter. It appears that no other attempts were made to alert the public at large to the Section 106 review underway. Had any attempt been made to alert the public through usual means, i.e. Legal Notice in the local paper of record (The Spirit of Jefferson), it is likely that members of the community and descendants would have responded.

Furthermore, there is no proof provided that the June 5th letter was in fact received by JCHLC. There is no delivery confirmation receipt or evidence of a postmarked envelope included with the July 24th letter. A review of JCHLC's meeting minutes from the past several years reveals that projects under Section 106 review are discussed and evaluated during the JCHLC's bimonthly meetings. There is no mention in the July 12, 2017 meeting minutes of the June 5th letter or the Section 106 process for Project FR# 17-437-JF, AKA "Project Shuttle" ([Exhibit FF](#)). The first time the Rockwool/Roxul project is discussed by JCHLC occurs on December, 18 2017 in which JCHLC member Ben Horter reports that "They are already moving dirt. Their 106 was approved". ([Exhibit GG](#)) To be clear, the Section 106 process was not closed until 7 months later in late June 2018.

The Cemetery was disparately impacted by the lack of public comment in that the local community, and even those historically-minded individuals on the JCHLC, were unaware of the imminent threat of development until construction had already begun. Had the public been alerted in advance, descendants and concerned citizens would have had the opportunity to voice opposition to the project and possibly been able to uncover the historic importance of the land parcel and Cemetery in particular.

d. Consultants failed to uncover the potentially important historical relevance of the Cemetery as it relates to the land parcel owned by Rockwool. This effectively denied the Cemetery the possibility of inclusion on the National Historic Properties Register.

History is not hidden in Jefferson County. In fact, the prominence of Revolutionary and Civil War history in the county make it a tourism destination for thousands of visitors every year. As described in the Background section of this report, the Cemetery and the surrounding land tell an important story of the rich history of Jefferson County. Starting in Revolutionary times, through the pre-civil war slave-holding period, the Civil War itself, and into the 20th century, the land on which Rockwool is building, and the Cemetery that is adjacent to this property, have significant historical value.

While general reference to local Jefferson County history is made in the History/Architecture Survey dated June 14, 2017, written by Jacquelyn Lehmann of Weller and Associated and the Phase 1 Archaeology Literature Review and Reconnaissance Survey dated June 29, 2017, written by Ryan Weller of Weller and Associates, the consultants does not appear to have completed an in-depth investigation of the land plot in question. A very shallow view of history is made according to the Scope of Work encompasses only the recent past of the property including its time as an orchard.

The archaeological surveys were inadequate in their examination of the history of the Rockwool land parcel and the surrounding area. As described by James Surkamp in his historical review “Rockwool, the cemetery and historical considerations” received by SHPO on May 3, 2019, the Dandridge connection is not the only significant history to have occurred in this area. Most of the information Mr. Surkamp uses to flesh out the story of this history is publicly available, including historic land and tax maps held by the Jefferson County Clerk and census data from the 1800’s. These data were available to the consultants, but they did not make the effort to find and study them.

This shallow effort by the consultants hired by Rockwool to understand historic values of the former Dandridge land certainly adversely affected the Cemetery and its occupants. The June 14, 2017 Survey notes the Cemetery but fails to realize the easily accessible portion of the Cemetery is a part of a much larger, older and historically significant burial ground. As described in section “[IV. THE CEMETERY BACKGROUND](#)”, old African American burial grounds, and especially enslaved persons burial grounds, do not look like what one would expect in a modern cemetery. However, the trained professionals completing these surveys should have been aware of at least some of the telltale signs of an African American burial ground, including yucca and other living markers. If the consultants had actually spent time on the ground in the Cemetery, they should have realized that the 53 burials cited in the 2005 Cemetery survey was an underestimation of the true number of modern graves, and only a portion of the total number of people laid to rest in the burial grounds. This realization would have tipped off the consultants that the Cemetery is a more significant historic site than it appears.

If the purpose of these surveys, and indeed, of the Section 106 procedure as is to investigate and evaluate the potential effects on historic places, as well as discover and uncover historic places that may not be obvious to the untrained eye, then these surveys failed miserably. The Cemetery was adversely affected by these surveys, that failed to reveal the true historic nature of the Cemetery, incorrectly assuming that it was ineligible for inclusion on the NRHP.

e. WVSHPO did not begin a “Post-review discovery” process as described in 36 CFR § 800.13 when it received new information about the historical significance of the property on May 3, 2019 from James Surkamp.

On April 23, 2019, Mr. James Surkamp sent a deeply researched report on the history of the Rockwool land parcel to Susan Pierce at WVSHPO. At the time, the Mountaineer Gas pipeline was being built, and the Cemetery was at critical risk as pipeline construction, including tree-clearing, trench digging and other earth moving activities proceeded along the west and north property lines of the Cemetery. Please see section [“VI. RECIPIENT: WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION”](#) in this complaint for more information on the issues related to the pipeline. For the most part of April 2019, several descendants and community members contacted SHPO for help protecting the Cemetery, but Mr. Surkamp’s communication, with its valid conclusions and detailed research should have prompted SHPO to begin the “Post-review discovery” process as described in 36 CFR § 800.13.

As described in 36 CFR § 800.13 (b)(3) “(b) Discoveries without prior planning. If historic properties are discovered or unanticipated effects on historic properties found after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section, the agency official shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and:

(3) If the agency official has approved the undertaking and construction has commenced, determine actions that the agency official can take to resolve adverse effects, and notify the SHPO/THPO, any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property, and the Council within 48 hours of the discovery. The notification shall describe the agency official's assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects. The SHPO/THPO, the Indian tribe or Native Hawaiian organization and the

Council shall respond within 48 hours of the notification. The agency official shall take into account their recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. The agency official shall provide the SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council a report of the actions when they are completed.”

A “post-review discovery” process would have allowed the Cemetery and the entire Rockwool land parcel an opportunity to be re-considered for NRHP eligibility based on new information. There is no way to know what “appropriate actions” to “resolve adverse effects” would have been recommended by WVSHPO. However, the simple fact that this process was not initiated caused an adverse disparate impact on the Cemetery, as it was denied yet again the chance to be recognized and registered as a historic place, thereby allowing the Cemetery to access and demand the protections granted for historic places by Federal law.

D. Authority

Complainants claim the WVSHPO has discriminated against the Cemetery under the following Public Civil Rights program guidelines in the United States Department of Interior, Office of Civil Rights, Civil Rights Directive 2011-01²⁰:

F. Civil Rights Restoration Act of 1987 (Pub. L. 100-259; 102 Stat. 28), as amended, by Civil Rights Restoration Act of 1991 (Pub. L. 102-166; 42 U.S.C. 2000d) to overturn the Supreme Court’s 1984 decision in *Grove City College v. Bell*, and to restore the effectiveness and vitality of the four major federal civil rights laws that prohibit discrimination in programs, activities, and services receiving federal financial assistance. For civil rights coverage purposes, the law broadly defines the terms “program” or “activity.

J. Executive Order (EO) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations identifies as discrimination, program actions taken, which adversely affect the health and environment of minority populations (i.e., ecosystems, human health, pollution and noise, historic/religious environmental effects). The EO provides coverage for federally conducted programs,

²⁰ United States Department of Interior Civil Rights Directive 2011-01
https://www.doi.gov/sites/doi.gov/files/migrated/pmb/eco/directives/upload/Civil-Rights-Directive-2011-01CProcedures-11_5_2010-wk.pdf

activities, and services and notes that the same duties are relevant to federal financial assistance programs, activities, and services covered under Title VI of the Civil Rights Act of 1964.

K. EO 13160, Nondiscrimination on the Basis of Race, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs ensures equal opportunity in government educational programs, activities, and services.

Complainants argue that the first harms caused by WVSHPO in 2017 to not adequately review the Cemetery for historical context in the Section 106 process caused an adverse domino effect and “fruit from the poisonous tree” that allowed other government agencies, such as WVDEP and WVDOT, to proceed with approving permits which led to irreparable harm to the Cemetery, its burials, its descendants, the archaeological significance, and African American culture and heritage.

E. Request

Based upon the foregoing, Complainants request that the DOI accept this complaint and conduct an investigation to determine whether WVSHPO violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and 40 C.F.R. Part 7 by failing to properly implement the Section 106 procedure. The haphazard Section 106 process caused a disparate impact on the Cemetery, which was deemed not eligible for inclusion on the NRHP. The cemetery faced additional disparate impacts when the non-complaint Section 106 process was erroneously cited in subsequent permits, or in the case of the NPDES Stormwater construction permit not obtained at all, to claim that the required historic preservation considerations had been met. As a result, construction was allowed to commence without proper consideration made to the potential effects on the Cemetery.

The Complainant request that SHPO begin a “Post-Review Discovery” process as described in 36 CFR § 800.13 based on Mr. Surkamp’s report received by SHPO May 3, 2019.

The Complainants request the a “Council review of section 106 compliance” be performed per 36 CFR § 800.9. Special attention to part (c) “Intentional adverse effects by

applicants”, is requested, as construction by Rockwool after the release of the NPDES stormwater construction permit but before field surveys could evaluate structures located on the property to conclude the Section 106 process, may have been intentionally hidden from SHPO for the purpose of destroying the historic setting before it could be evaluated.

If violations of Title VI of the Civil Rights Act of 1964 are discovered and WVSHPO is unable to demonstrate a substantial, legitimate justification for its actions, and does not voluntarily implement a less discriminatory alternative that is practicable, Complainants further petition the DOI to initiate proceedings to deny, annul, suspend, or terminate DOI financial assistance to WVSHPO.

VI. RECIPIENT: WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

The United States Environmental Protection Agency (EPA) awards grants on an annual basis to many state and local agencies that administer continuing environmental programs under EPA’s statutes. As a condition of receiving funding, recipient agencies must comply with EPA’s Title VI regulations, which are incorporated by reference into the grants. EPA’s Title VI regulations define a “recipient” as “any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient.” Title VI creates for recipients a nondiscrimination obligation that is contractual in nature in exchange for accepting Federal funding. Acceptance of EPA funding creates an obligation on the recipient to comply with the regulations for as long as any EPA funding is extended.

Under amendments made to Title VI, by the Civil Rights Restoration Act of 1987, a “program” or “activity” means all of the operations of a department, agency, special purpose district, or other instrumentality of a state or a local government, any part of which is extended Federal financial assistance. Therefore, unless expressly exempted from Title VI by Federal statute, all programs and activities of a department or agency that receives EPA funds are subject to Title VI, including those programs and activities that are not EPA-delegated. For example, the issuance of “state-only” water pollution control permits under programs, such as WVDEP’s oil

and gas stormwater construction permitting program, that do not derive their authority from EPA's National Pollution Discharge Elimination System (NPDES) delegation, but directly from the Clean Water Act and its WV state counterpart, are nevertheless part of a program or activity covered by Title VI regulations, if the recipient receives any funding from EPA.

A. Federal Funding

As shown in Table 1 below, WVDEP was a recipient of financial assistance from EPA at the time of the alleged discriminatory act and remains a recipient of financial assistance from EPA.

State of West Virginia - FY 2019 Federal Programs 58

**ENVIRONMENT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE WATER POLLUTION CONTROL, SECTION 106**

Description:
This grant program provides support for the basic water pollution control activities of the state. Permitting and enforcement are included in this grant.

Grantor: U.S. Environmental Protection Agency

Is "Maintenance of Effort" required? Yes

Financial Information	Fund	Fiscal Year	Organization
	8708	2019	0313

Matching Formula	Federal	State	Local
	100%	0%	0%

Federal Catalog Number	Actual Receipts FY 2017	Estimated Receipts FY 2018	Estimated Receipts FY 2019
66.419	\$1,345,300	\$1,500,000	\$2,000,000

Comments:
Maintenance of Effort is \$211,947.

**ENVIRONMENT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
UNDERGROUND STORAGE TANKS**

Description:
Funding for compliance monitoring and enforcement of the technical regulations concerning underground storage tanks.

Grantor: U.S. Environmental Protection Agency

Table 1: WVDEP financial assistance from EPA.

B. Timeliness of Complaint

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving Federal financial assistance must be filed within 180 days after the alleged discriminatory act. The issuance of Mountaineer's Registration No. WVR311281 under WV

General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities, occurred on March 29, 2019. The 180 day limitations period ends September 24, 2019. This complaint was sent by overnight delivery to U.S. EPA External Civil Rights, Compliance Office (2310A), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460 and emailed to Title_VI_Complaints@epa.gov on September 23, 2019.

C. Discriminatory Act(s)

1. Background on the Mountaineer Gas Route 9 Extension Project

When a new intrastate natural gas pipeline construction project does not cross a state border, the responsibility for approval of the pipeline route falls to the individual states, and FERC does not play a role. The permitting process for such intrastate pipelines varies from state to state and may involve different federal, state, and local stakeholders. Unlike FERC's interstate pipeline siting and approval process, the intrastate process in most cases does not use a lead agency to authorize and coordinate siting and environmental reviews. Whereas FERC's process is rigorous, intrastate pipeline siting is crude and haphazard.

In a recent General Accountability Office (GAO) study, representatives from public interest groups expressed that it is more difficult for the public to comment on proposals for intrastate pipelines because the state processes are not transparent, and the public may not learn about the pipelines until after they have been approved. There is no uniform standard for right-of-way agreements and eminent domain authority, and procedures vary by state. Overall, it concluded that the intrastate process is challenging to navigate and can put federally protected resources, including cultural resources at risk. The lack of meaningful public participation was noted as a contributing factor to poor outcomes of environmental and socio-economic impacts.

That is the case in West Virginia. Mountaineer had to overcome only two regulatory hurdles in getting its pipeline project built:

1. Public Service Commission (PSC) approval of a customer rate tariff allowing them to charge existing customers throughout the state to pay the extra amount in their every month gas bills to fund the Route 9 Expansion Project; and

2. WVDEP approval of a Construction Stormwater General Permit Registration allowing them to begin to trench and place the pipeline into the ground.

For both approvals, the level of stakeholder involvement required was minimal. In fact, the citizens of Berkeley County and Jefferson County had no firm idea of the path the pipeline would take until the Stormwater Permit went final on March 29, 2019. Maps released when the permit went out for a formal 30 day comment period, January 25 to February 25, 2019, were the wrong maps. Moreover, the public was denied a promised public hearing.

2. Discriminatory WVDEP Policies and Procedures

WVDEP's policies and practices in issuing Mountaineer's Route 9 Expansion Project stormwater permit violated U.S. Civil Rights Act Title VI disparate impact regulations. The following THREE acts that involve discriminatory policies and practices are at issue:

1. The permit applicant provided incorrect mapping and documentary easements; WVDEP failed to check their veracity or accuracy;

2. The permit applicant proposed and then used illegal construction standards; WVDEP failed to notice that the pipeline would be installed in prohibited areas;

3. WVDEP prevented public input during the permitting process and hid the details of the revised pipeline route until it was too late;

Each of these WVDEP policies and procedures are discussed in detail below.

a. The permit applicant provided incorrect mapping and documentary easements; WVDEP failed to check their veracity or accuracy

i. Property Ownership and Easement Errors

Because WVDEP permit reviewers rely exclusively on the permit applicant to provide correct construction standards and details, including correct right of ways and easements, errors can be introduced into the permitting process when the applicant is either mistaken or purposely obscures the facts. Some errors can be significant. The WVDEP policy of not verifying—even

spot checking—basic information provided by the applicant is potentially harmful to program outcomes, including preserving compliance with Title VI. In the case of Mountaineer, errors in the permit application not caught or corrected by the permit reviewer caused disparate harm to the Complainants.

Mountaineer maps submitted to WVDEP in the permit application had several property ownership discrepancies. Mountaineer inaccurately mapped the A.M.E. Church property as being (b) (6) Privacy, (b) (7)(C) Enforcement Privacy property. ([Exhibit HH and II](#)). Note the (b) (6) Privacy, (b) (7)(C) Enforcement Privacy property is next to the A.M.E. Church property and (b) (6) Privacy, (b) (7)(C) Enforcement Privacy did not have to give a pipeline easement ([Exhibit JJ](#)).

On April 19, 2019, Mountaineer recorded an easement in the Jefferson County Clerk's Office which included the A.M.E. Church property ([Exhibit KK](#)). It is unclear how Mountaineer Gas could have received easement permission from (b) (6) Privacy, (b) (7)(C) Enforcement Privacy to go through the A.M.E. Church property with the gas pipeline. As stated in subsection "[4. African Methodist Episcopal Church of Kearneysville Affiliation](#)" of this complaint, no trusteeship or transfer of ownership has been discovered associating (b) (6) Privacy, (b) (7)(C) Enforcement Privacy to the A.M.E. Church or its property. This is a case of a blatant theft of property rights.

WVDEP approval of Mountaineer Gas' pipeline route and maps has resulted in the possible disturbance or removal of burials at the A.M.E. Church as well as destroying the archaeological integrity of the area.

ii. Incorrect Boundaries

WVDEP permit review did not notice that Mountaineer's pipeline plans show the Cemetery property boundaries incorrectly and drastically reduced in size. ([Exhibit HH](#)) and ([Exhibit LL](#)) Mountaineer claims in the Plan Set submitted with the permit application that "Boundary lines as shown herein are primarily based on tax parcel information derived from GIS databases. Accuracy is not verified." It is unclear where this error could have come from, as the Jefferson County GIS tax maps do show the correct Cemetery property boundary.

If it was advantageous to the permit applicant to shave corners off a Title VI-protected community's significant historical, cultural, and archeological resources in order to enable the

pipeline to go through, then who is to stop them? The permit writer does not look, the professional engineer hired by Mountaineer who stamps the plans admits that accuracy is not verified, and members of the public—including Title VI-protected stakeholders who could have in one glance told the permit writer this is an inaccurate representation of the Cemetery—could not view the maps. Not only that, but the maps and route were changed only one week before the permit was granted.

In addition to the incorrect property boundary, Mountaineer’s maps show only a small shaded area to be the Cemetery. But, as documented in our ground-penetrating radar survey, there are many graves located outside of this shaded area and along the Cemetery’s property boundaries. Again, such information could have been brought forth in a transparent stakeholder involvement permitting process, but WVDEP policy and procedures prevented that.

One might ask, “How can a WVDEP permit writer check on the accuracy of a map—is that their job?” The answer is simple: just look at the Stormwater Permits that have already approved in the same area. For example, Mountaineer’s maps of the Cemetery boundaries and size differ significantly with Rockwool’s stormwater construction site maps which correctly depict the correct boundaries and had already been approved by the same permit writer. ([Exhibit AA](#))

Another question might be: what is the significance of a little discrepancy in boundary lines? Mountaineer’s incorrect boundaries of the Cemetery could not allow for proper construction setbacks. Graves outside of the shaded area and incorrect boundaries have been put at risk of being disturbed and the back portion of the Cemetery abutting Rockwool’s property has already been disturbed. Such disturbance means irretrievable loss of archeological setting and possibly remains and materials. For the Title VI-protected individuals whose ancestors lay in that Cemetery, that small boundary difference meant the whole world.

iii. Limits of Disturbance (LOD) errors and alignment of the pipeline

The WVDEP permit reviewer needs an accurate estimate of the amount of land expected to be disturbed during construction as well as the total linear extent of any proposed pipeline. Unfortunately, Mountaineer provided estimates that varied from document to document and

changed during the permitting process. Moreover, the routing of pipeline changed significantly in the middle of the formal public comment period and the public was not informed. Because of the cancellation of the public hearing that was at first advertised and then rescinded, no one was aware of these changes. The only allowed comments were written ones based on the inaccurate maps. Also concerning is that the U.S. Fish and Wildlife consultation letter on possible Endangered Species Act (ESA) impacts was based on incorrect data.

	LOD (acres)	Pipeline Length (miles)
Nov. 21, 2018 Karst Survey	unknown	7.9
Dec. 7, 2018 Permit Application	31.34	7.9
Jan. 25, 2019 Public Notice	32.64	4.93
Feb. 2018 SWPPP	25.38	4.85
USFWS Consult. Letter	17	6.57
March 29, 2019 Permit Approval Letter	25.38	4.85

Table 2: Limits of disturbance (LOD) and pipeline alignment of Mountaineer Gas Route 9 Extension Project cited in different documents

b. The permit applicant used illegal construction methods; WVDEP failed to notice that the pipeline would be installed in prohibited areas.

i. Illegal construction

Intrastate pipeline siting, unlike the FERC siting process, has no oversight. The planned routes and methods of construction--as in the case of the Route 9 Extension Project--have very little scrutiny. Mountaineer is trusted to identify and comply with applicable federal, state, and local rules and regulations in order to legally place pipe in the ground. But who checks on that? The WVDEP permit reviewer's role is limited. Their focus is on the appropriateness of sediment

and erosion controls. But what if those controls are placed in an entirely prohibited area? Is there a consequence to the failure of WVDEP to have any kind of responsibility to determine if the sediment and erosion controls that they approve are even approvable, if the location and method of construction is illegal?

General Permits, like the Oil and Gas Construction Stormwater Permit, are set up with basic requirements well known and pretty much boilerplate. Everything from the applicant gets entered into WVDEP's Electronic Submission System (ESS), which makes for a useful "checklist" type of approach, but fails to require truthfulness or accuracy. The days of permit writers meeting the company engineer to pore over site plans are gone.

One significant state pipeline construction standard, put forth in an October 1, 2018, WV Department of Transportation, Division of Highways, Memorandum²¹ was missed by both Mountaineer and the WVDEP permit reviewer. That memo is addressed to "All District Engineers/Managers" and signed by Thomas J. Smith, P.E., Secretary of Transportation and Commissioner of Highways ([Exhibit MM](#)).

The key phrases are extracted here:

"SUBJECT: OIL AND GAS PIPELINE CROSSING REQUIREMENTS

A. CONTROLLED/LIMITED ACCESS (CA) HIGHWAYS

1. GENERAL

... Longitudinal pipeline installations are not permitted within the DOH Right of Way.

...

B. NON-CONTROLLED/LIMITED ACCESS HIGHWAYS

1. GENERAL

Non-CA Highways include 1-lane, 2-lane or multi-lane roadways with no type of access control, such as US, WV, County Routes, HARP (Home Access Road Program Routes) and State Forest Routes under the control of DOH. Longitudinal pipeline installations are not permitted within the DOH Right of Way."

²¹ WV Department of Transportation, Division of Highways, October 1, 2018, Memorandum https://transportation.wv.gov/highways/maintenance/Documents/Oil%20and%20Gas%20Pipeline%20Crossing%20Requirements_signed%20by%20CC_Oct%202018.pdf

The memo states that it: “provides additional guidance for preparation of permit requests to construct facilities for pipelines that carry natural gas, petroleum products or other similar materials produced and carried through pipelines, along with the requirements found in the latest edition of *THE ACCOMMODATION OF UTILITIES ON HIGHWAY RIGHT OF WAY AND ADJUSTMENT AND RELOCATION OF UTILITY FACILITIES ON HIGHWAY PROJECTS MANUAL*. In any instance where discrepancies exist between this guidance and the manual, these guidelines shall prevail.”

Is it possible this guidance applies to all portions of the Mountaineer Route 9 Extension Project where pipeline was installed longitudinally in the DOH Right of Way? That would definitely include the stretch along Coast Guard Lane, which is a marked County Route 9/57; as well as all of Good Folks Road, which is marked County Route 48/3. In both of these cases, Mountaineer pipeline was installed longitudinally and within the DOH ROW. ([Exhibits NN and OO](#)).

The guidance does not address the longitudinal installation of pipeline within the DOH ROW of a bike lane which borders on a Controlled Access Highway, i.e. Route 9. Our Complaint covers that concerning issue in Section “[VII. RECIPIENT: THE FEDERAL HIGHWAY ADMINISTRATION](#)” of this complaint, addressed to the FHWA.

It is our contention that the Mountaineer Pipeline was illegally installed in several key places, perhaps as much as half its entire route (2.4 miles out of the total 4.85 linear miles). The WVDOH permit reviewer was either unaware of this guidance memo or ignored it. Did Mountaineer Gas know about the memo? That is their job. How about the WVDOH engineer who processed the DOH Encroachment and Utilities Installation Permits--was he or she aware of this prohibition? Because the Complainants contend that they should have known and therefore prevent the Title VI violation and discriminatory harm, both USDOT and FHWA are named in this Title VI complaint (Sections “[VI. RECIPIENT: WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS](#)” and “[VII. RECIPIENT: THE FEDERAL HIGHWAY ADMINISTRATION](#)”).

c. WVDEP prevented public input and hid changes to the permit

WVDEP decided that due to expressed public interest and concern, the Oil & Gas Construction Stormwater Application for Mountaineer's Route 9 Extension Project would go to public review. The review was to include a 30 day period of public comment and a scheduled public hearing. WVDEP required Mountaineer to pay for placing an advertisement in the Legal Notice section of the Martinsburg Journal and the Department of Water and Waste Management (DWWM)²², the subunit of WVDEP responsible for stormwater permitting, wrote the text for the advertisement ([Exhibit PP](#), Public Notice No. SM-4-2019). They subsequently placed it in the Journal. It ran in the evening edition of a single day: Friday, January 25, 2019 ([Exhibit QQ](#)).

There is no certified copy of that placement in the administrative record, which is a violation of WVDEP procedure. The copy we obtained was in a repository of WVDEP responses to a FOIA request from (b) (5) Privacy, (b) (7)(C) Enforced as part of the evidentiary proceedings in his EQB appeal of the permit (see discussion in subsection "[G. Pending Administrative Reviews](#)"). The photocopy of the actual newspaper notice was provided by (b) (5) Privacy, (b) (7)(C) Enforced Eastern Panhandle Protectors.

The following WVDEP policies and procedures used during the Public Comment period constitute violations of Title VI and resulted in disparate harm to the Cemetery and Complainants:

i. The stated activity in Public Notice No. SM-4-2019 is incorrect.

As this language was written by DWWM, the error falls to WVDEP. The Activity changed significantly during the comment period (ran from January 25 — February 25, 2019), as DWWM well knew. On February 18, 2019, with 1 week remaining in the comment period, DWWM instructed Mountaineer to remove their application from the ESS and submit a new one. [Exhibit RR](#) shows the time/date stamp of all the ESS uploads associated with the permit, and the activity on 2/14 and 2/18/2019 is significant. The resubmitted application was never re-advertised, as it should have been, so the application that public commenters had to work with was the old one. Significant changes in the 2/18/2019 non-advertised resubmittal include:

²² <https://dep.wv.gov/WWE/Pages/default.aspx>

- **REMOVAL** of 5.96 acres of LOD;
- **SHORTENING** the linear extent of the pipeline by 3.05 miles;
- **CANCELLING** the installation of pipeline near the (wealthy) sub-divisions, (influential) residential properties, and (profitable and influential) commercial enterprises in Berkeley County;
- **RE-ROUTING** the pipeline so that it is now placed directly on top of the worst sinkhole (No. R9E-2) identified in the Nov. 21, 2018, GeoConcepts Report;
- **RE-ROUTING** the pipeline so it would now be constructed within INCHES of historic remains of the African Methodist Episcopal (A.M.E.) Church and suspected burial grounds;

ii. The February 21, 2019 scheduled Public Hearing at the Ranson Civic Center was cancelled. WVDEP refused to reschedule another one.

Instead, they approved the permit summarily on March 29, 2019 ([Exhibit SS](#)) —an action that was opposed by DWWM staff, but overridden at the highest level: the WVDEP Secretary himself, Austin Caperton, a longtime coal executive and cousin of former Gov. Gaston Caperton.

²³ The following April 5, 2019, news article²⁴ sums it up:

“As early as last November, citizens of the Eastern Panhandle began contacting the DEP to request a public hearing on the pipeline extension.

In mid-January, the DEP contacted (b) (5) Privacy, (b) (7)(C) Enforcement to let her know the hearing would be scheduled due to the high level of public interest.

At a different DEP hearing on January 30th, representatives of the DEP told members of the public that the pipeline hearing would have to be rescheduled due to a conflict at the Ranson Civic Center.

“Since then, we have been in constant contact with the DEP,” (b) (5) Privacy, (b) (7)(C) said. “At first, the agency informed us that they were having trouble finding a venue. By the end of February, after the originally scheduled date had passed, officials gave us the no comment treatment when asked about the hearing. Then, on March 6, an official stated that someone from Ranson has told him that ‘they couldn’t guarantee the DEP’s safety.’”

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<http://wvmetronews.com/2017/01/13/coal-exec-austin-caperton-cousin-of-former-gov-gaston-caperton-to-oversee-environmental-agency/>

²⁴ <https://morgancountyusa.org/?p=3992>

“Finally, our local elected officials got involved and requested the hearing on our behalf. This was to no avail. The DEP did what they probably planned to do from the start, regardless of citizens’ concerns: approve the permit and allow pipeline work to begin.””

D. Adverse Impacts

Since a proper archaeological survey was never performed by WVSHPO and the lack of oversight by the WVDEP regarding Mountaineer Gas' pipeline route on the A.M.E. Church property, it may be impossible now to determine if graves were there and disturbed by the pipeline construction. We are not aware of a Mountaineer Gas archaeologist being present during pipeline construction. Failure to follow these procedures has resulted in the possible disturbance or removal of burials near the Cemetery as well as destroying the archaeological integrity of the area.

The following adverse impacts have occurred:

1. Construction fence installed

Without permission or notice, on April 9 & 10, 2019, construction fence was installed inches away from unmarked graves. ([Exhibit TT](#)) Not only was this disrespectful and may have caused damage to graves, it gave the impression that the Cemetery should not be visited.

2. Tree cutting

On April 15, 2019, Mountaineer Gas or their contractor was video recorded clear cutting trees along the Cemetery boundary and cut into the Cemetery farther than necessary.^{25, 26} One tree was removed beyond Rockwool’s proposed property marker stake ([Exhibit UU](#)). Other trees and their limbs were damaged and precariously hung into the Cemetery. These damaged trees and limbs were a risk to individuals’ safety visiting the Cemetery and to the Cemetery burials. Also, these trees could be slave burial markers.

²⁵ <https://www.facebook.com/easternpanhandleprotectors/videos/379181332681660/>

²⁶ <https://www.facebook.com/easternpanhandleprotectors/videos/169977890595221/>

3. Blocking Road - Pipeline Construction

From April to May 2019, the gas pipeline construction near the Cemetery caused the descendants and Cemetery visitors many hardships and obstacles trying to visit the Cemetery. On May 2, 2019, the only access to the Cemetery, Granny Smith Lane, was completely blocked by Mountaineer Gas' pipeline construction activities. ([Exhibit - VV](#)) This denial of Cemetery access and other construction activities created a hostile environment and violated the descendants' and Cemetery visitors' rights under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc.

E. Authority - WV Department of Environmental Protection

EPA guidance provides that the External Civil Rights Compliance Office (ECRCO) will accept for processing only those Title VI complaints that include at least an allegation of a disparate impact concerning the types of impacts that are relevant under the recipient's permitting program. The discriminatory policies and procedures outlined in subsection "[2. Discriminatory WVDEP Policies and Procedures](#)" are directly connected to how WVDEP currently reviews and issues registrations under the Oil and Gas Construction Stormwater General Permitting Program. In particular, the lack of a meaningful public participation element to the granting of registrations under the General Permit led directly to disparate harm to the Title VI-protected community of African American descendants of the Cemetery and prohibited them from exercising their basic right of egress to the cemetery and enjoyment of that special space. Two simple things that WVDEP could have done to prevent the disparate harm from happening were to: 1. Not allow a revision of the proposed pipeline route without seeking public input; and 2. Listen to and respect the pleadings of the potentially impacted parties before the harm occurred.

F. Justification and Less Discriminatory Alternatives

"If the recipient can neither rebut the initial finding of disparate impact nor develop an acceptable mitigation plan, then the recipient may seek to demonstrate that it has a substantial, legitimate interest that justifies the decision to proceed with the agency action notwithstanding the disparate impact." Interim Guidance at 4. "[T]here must be some articulable value to the

recipient in the permitted activity.” Id. at 11. “The justification must be necessary to meet ‘a legitimate, important goal integral to [the recipient’s] mission.’”

Enabling the installation of a natural gas pipeline to provide up to 47,500 Dekatherms per day (Dth/d) of incremental firm transportation service to the Rockwool Ranson facility is not WVDEP’s mission. Protecting human health and the environment when the pipeline company applies for a stormwater control permit to undertake that action is. WVDEP’s official mission statement has changed over the years, evolving from this: “Use all available resources to protect and restore West Virginia’s environment in concert with the needs of present and future generations.”²⁷ to this: The West Virginia Department of Environmental Protection’s mission is to promote a healthy environment. To do this, the agency must protect the environment while leaving room for a sustainable industry base. Such a task requires careful balance. Its major divisions – protecting air, land, and water – plus an office regulating the oil and gas industry, must be circumspect and fair in regulating industry, permitting extraction of natural resources and protecting the public from potential pollution hazards.”²⁸ Nevertheless, we believe a sustainable industry base should not translate into violating Civil Rights.

A less discriminatory alternative to the Title VI-violating policies and procedures in place at the WVDEP today would be to install a fair and impartial General Permitting process that does not violate Civil Rights.

G. Pending Administrative Reviews

In certain circumstances, EPA may decide that a complaint will be “closed” because a pending administrative review or appeal which “could affect the circumstances surrounding the complaint and any investigation that ECRCO may conduct.” In such cases, EPA may “may waive the 180 day filing time limit if the complaint is filed within a reasonable time period after the conclusion of the administrative appeal process.” There is an active appeal of Mountaineer’s General Permit Registration at DEP’s Environmental Quality Board (EQB). On April 29, 2019,

²⁷ <https://www.dep.wv.gov/dlr/oer/voluntarymain/Documents/Risk%20Assessment%20Guide.pdf>

²⁸ <https://dep.wv.gov/pio/Documents/2016-17%20Annual%20Report.pdf>

(b) (6) Privacy, (b) (7)(C) Enforcement Privac filed a timely appeal to Mountaineer's permit.²⁹ It was based on Mountaineer's failure to comply with the Endangered Species Act (ESA). Moreover, all of the Route 9 extension pipeline construction is complete and the disparate harm already done to the Complainants. The EQB has pushed (b) (6) Privacy, (b) (7)(C) Enfor evidentiary hearing back twice already; it will not happen until Dec. 12-13, 2019. The Complainants here are not a party to that appeal. Its disposition has no bearing on our Title VI complaint.

H. Request

Based upon the foregoing, Complainants request that the EPA OECR accept this complaint and conduct an investigation to determine whether WVDEP violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and 40 C.F.R. Part 7 in the issuance of Mountaineer Registration No. WVR311281 on March 29, 2019. If a violation is found and WVDEP is unable to demonstrate a substantial, legitimate justification for its action and to voluntarily implement a less discriminatory alternative that is practicable, Complainants further petition the USEPA to initiate proceedings to deny, annul, suspend, or terminate EPA financial assistance to WVDEP.

VII. RECIPIENT: WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS

The United States Department of Transportation (USDOT) awards funding on an annual basis to many state DOTs that administer continuing highway construction, maintenance, and other programs under USDOT statutes. As a condition of receiving funding, recipient agencies must comply with USDOT's Title VI regulations, which are incorporated by reference into the grants. Title VI creates for recipients a nondiscrimination obligation that is contractual in nature in exchange for accepting Federal funding. Acceptance of USDOT funding creates an obligation on the recipient to comply with the regulations for as long as any USDOT funding is extended.

²⁹ (b) (6) Privacy v. Director, Division of Water and Waste Management, DEP, and Mountaineer Gas. EQB Appeal No. (b) (6) Privacy-EQB. It was Certified at EQB on May, 15, 2019, and an evidentiary hearing set for May 23, 2019. His request to stop work on the pipeline installation and stay the permit was denied. The hearing was rescheduled to Aug. 8-9, 2019. It was for a second time rescheduled, now set for Dec. 12-13, 2019.

A. Federal Funding

As shown in Table 2 below, the WV Division of Highways (DOH) within the WVDOT was a recipient of financial assistance from USDOT at the time of the alleged discriminatory act and remains a recipient of financial assistance.

The screenshot shows a PDF document titled "B02_FY_2019_14346.pdf" from the website "www.wvlegislature.gov/legisdocs/reports/agency/B02_FY_2019_14346.pdf". The document contains two tables of financial information.

TRANSPORTATION DIVISION OF HIGHWAYS

OTHER FEDERAL AID PROGRAMS

Description:
Construction, maintenance, planning and/or research on federal-aid eligible routes that are not classified as Interstate or Appalachian Development Highway System routes.
Grantor: U.S. Department of Transportation
Is "Maintenance of Effort" required? No

	Fund	Fiscal Year	Organization
Financial Information	9017	2019	0803
	Federal	State	Local
Matching Formula	80%	20%	0%
Federal Catalog Number	Actual Receipts FY 2017	Estimated Receipts FY 2018	Estimated Receipts FY 2019
97.089	\$291,800,064	\$296,840,000	\$283,360,000

TRANSPORTATION DIVISION OF PUBLIC TRANSIT

SECTION 5305 STATE PLANNING AND RESEARCH PROGRAM

Description:
This is a continuous grant program that provides technical and planning assistance to the state's transit providers. This grant also provides funding for the Division to administer this program.
Grantor: U.S. Department of Transportation
Is "Maintenance of Effort" required? No

	Fund	Fiscal Year	Organization
Financial Information	8745	2019	0805
	Federal	State	Local

Table 3: WV Division of Highways (DOH) within the WVDOT was a recipient of financial assistance from USDOT.

B. Timeliness of Complaint

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving Federal financial assistance must be filed within 180 days after the alleged discriminatory act. The issuance of Mountaineer's Registration No. WVR311281 under WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities, occurred on March 29, 2019. The 180 day limitations period ends September 24, 2019. This complaint was sent by overnight delivery to the Department of Transportation,

Departmental Office of Civil Rights, 1200 New Jersey Ave, S.E., Washington, DC 20590 on September 23, 2019.

C. Discriminatory Act

The alleged discriminatory act on the part of West Virginia Department of Transportation (WVDOT) Division of Highways (DOH) is the failure to provide legal and appropriate Right of Way (ROW) clearances and to ignore the publication of a WVDOT guidance which expressly prohibits the installation of natural gas pipeline in the longitudinal path of a WV roads; these two discriminatory acts contributed to the Title VI-violating issuance to MOUNTAINEER GAS COMPANY (Mountaineer) of Registration No. WVR311281, March 29, 2019, under WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities ([Exhibit SS](#)).

This registration covered the discharge of stormwater associated with the disturbance of approximately 25.38 acres of land and consists of the installation of approximately 4.85 miles of natural gas distribution pipeline in Berkeley and Jefferson Counties, West Virginia. The project included access roads, 12.22 acres entirely within the DOH Right-of-way and 13.16 acres of private Right-of-way. [Exhibit WW](#) is a closeup of the Overall Site Map, which says, “Right of Way information provided by West Virginia Division of Highways District 5.”

In a guidance memo put forth on October 1, 2018, addressed to “All District Engineers/Managers” and signed by Thomas J. Smith, P.E., Secretary of Transportation and Commissioner of Highways ([Exhibit MM](#)), the WV Department of Transportation, Division of Highways Memorandum,³⁰ prohibits longitudinal pipeline installation in the DOH right of way. This applies to both Controlled Access Highways and all State and County Roads. The key phrases are excerpted here:

“SUBJECT: OIL AND GAS PIPELINE CROSSING REQUIREMENTS
A. CONTROLLED/LIMITED ACCESS (CA) HIGHWAYS
1. GENERAL

³⁰ WV Department of Transportation, Division of Highways, October 1, 2018, Memorandum <https://transportation.wv.gov/highways/maintenance/Documents/Oil%20and%20Gas%20Pipeline%20Crossing%20Requirements%20signed%20by%20CC%20Oct%202018.pdf>

... Longitudinal pipeline installations are not permitted within the DOH Right of Way.

...

B. NON-CONTROLLED/LIMITED ACCESS HIGHWAYS

1. GENERAL

Non-CA Highways include 1-lane, 2-lane or multi-lane roadways with no type of access control, such as US, WV, County Routes, HARP (Home Access Road Program Routes) and State Forest Routes under the control of DOH. Longitudinal pipeline installations are not permitted within the DOH Right of Way.”

The memo states that it: “provides additional guidance for preparation of permit requests to construct facilities for pipelines that carry natural gas, petroleum products or other similar materials produced and carried through pipelines, along with the requirements found in the latest edition of *THE ACCOMMODATION OF UTILITIES ON HIGHWAY RIGHT OF WAY AND ADJUSTMENT AND RELOCATION OF UTILITY FACILITIES ON HIGHWAY PROJECTS MANUAL*. In any instance where discrepancies exist between this guidance and the manual, these guidelines shall prevail.”

We contend that his guidance applies to all portions of the Mountaineer Route 9 Extension Project where pipeline was proposed to be and actually was installed in longitudinal fashion along the side and within the legal limits of the DOH right of way. That would definitely include the stretch along Coast Guard Drive, marked County Route 9/57; as well as all of Good Folks Road, marked County Route 48/3. In both of these cases, Mountaineer pipeline was installed longitudinally within the DOH ROW. ([Exhibits NN and OO](#)).

Moreover, we believe that Mountaineer knew about the prohibition--or at least learned about it around February 14, 2019, when they replaced illustrations in their WVDEP application of obvious intent to install in the longitudinal (i.e., along with the traffic) course of the DOH rights of way ([Exhibits XX](#)). Mountaineer pipeline was illegally installed in several key places, perhaps as much as half its entire route (2.4 miles out of the total 4.85 linear miles). [Exhibits YY](#) shows the actual longitudinal installation occurring on Coast Guard Drive.

The DOH District Engineer was either unaware of this guidance memo or ignored it. The DOH District 5 office had to collect road bonds and agreements (Encroachment Permits) prior to

Mountaineer beginning these illegal installs, and therefore they are complicit. Because we contend that DOH should have known and said nothing, WVDEP granted Mountaineer a flawed construction stormwater permit that resulted in pipeline installation and disparate harm to the Complainants.

D. Authority - WV Department of Transportation, Division of Highways

DOT guidance also requires a Title VI complaint to move forward only if it includes at least an allegation of disparate impact concerning the types of impacts that are relevant to the recipient's construction, maintenance, and other planning, research, and USDOT rule implementation programs. As discussed in subsection "[C. Discriminatory Act](#)" of this section, DOH has an affirmative requirement to oversee, approve, and inspect all Utility Installations that occur within a DOH Right of Way ROW). In addition, to individual crossing permits that are required for each location at which the pipeline transversely crosses a state-managed highway, it also maintains oil and gas information sheets on pipelines requesting installations that are in or impact on the DOH ROW. Coring requests where a pipeline crosses under a road must include Plan Profiles and Cross-Section Views. A Traffic Control Plan must be submitted. Finally, a DOH inspector must inspect the pipeline crossing work when it is finished. Given all of those interactions and mission requirements, it begs disbelief how the official October 15, 2018, DOH Guidance³¹ that PROHIBITS the installation of natural gas pipelines of any sort in the longitudinal ROW of any state road could have been overlooked. The disparate impact suffered by the Cemetery descendants could have been avoided if the DOH engineers responsible for the Mountaineer project had done their job.

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https://transportation.wv.gov/highways/maintenance/Documents/Oil%20and%20Gas%20Pipeline%20Crossing%20Requirements_signed%20by%20CC_Oct%202018.pdf

E. Request

Based upon the foregoing, complainants request that the USDOT accept this complaint and conduct an investigation to determine whether WVDOT violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and 40 C.F.R. Part 7 for the failure to prevent Mountaineer Gas from installing a natural gas pipeline in the longitudinal stretch of two WVDOT-maintained county roads: Coast Guard Lane and Good Folks Road, against the expressed WVDOT guidance prohibiting such an action. If a violation is found and WVDOT is unable to demonstrate a substantial, legitimate justification for its action and to voluntarily implement a less discriminatory alternative that is practicable, complainants further petition the USDOT to initiate proceedings to deny, annul, suspend, or terminate USDOT financial assistance to WVDOT.

VIII. RECIPIENT: THE FEDERAL HIGHWAY ADMINISTRATION

The Federal Highway Administration (FHWA) is an agency within the U.S. Department of Transportation (USDOT) that supports State and local governments in the design, construction, and maintenance of the Nation's highway system (Federal Aid Highway Program) and various federally and tribal owned lands (Federal Lands Highway Program). Through financial and technical assistance to State and local governments, the Federal Highway Administration is responsible for ensuring that America's roads and highways continue to be among the safest and most technologically sound in the world.³²

A. Funding

Unlike the USDOT that has state agency DOT counterparts, and which are the recipient of federal program funds and grants, the FHWA administers their programs directly to the states, via direct disbursement of highway funds and maintenance of FHWA offices in each state and region. FHWA has its own Office of Civil Rights with unique responsibilities for ensuring Title VI compliance in the state agencies and activities that involve the use of federal highway dollars.

³² <https://www.fhwa.dot.gov/about/>

FHWA Program Areas in which they provide direct assistance to WVDOT include the following:

- Acquisition Management
- Infrastructure
- Planning, Environment, and Realty
- Safety

The two program areas most relevant to this Complaint are 1. Infrastructure and 2. Planning, Environment, and Realty. Infrastructure oversees the use of highway funds to build and maintain highway-associated bicycle and pedestrian projects. The Intermodal Surface Transportation Act of 1991 (ISTEA) first authorized federal transportation dollars to be spent on bicycle and pedestrian projects. The Transportation Equity Act of 1998 (TEA-21) was the first time federal dollars were authorized to be spent on bicycle pedestrian projects within Interstate Highway Corridors.

Note that Federal interstate highway funds can only be used for bicycle and pedestrian facilities if they are in the highway right of way. That is the case with the Route 9 Bike Path.

B. Timeliness of Complaint

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving Federal financial assistance must be filed within 180 days after the alleged discriminatory act. WVDEP's issuance of Mountaineer's Registration No. WVR311281 under WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities, occurred on March 29, 2019. Three days later, on April 2, 2019, Mountaineer began to trench and install pipeline. The date of harm for both these actions is within the 180 day limitations period which ends September 24, 2019, and September 27, 2019, respectively. This complaint was sent by overnight delivery on September 22, 2019 to the Federal Highway Administration, U.S. Department of Transportation, Office of Civil Rights,

1200 New Jersey Avenue, SE, 8th Floor E81-105, Washington, DC 20590. It was also emailed on September 23, 2019, to FHWA.TitleVIcomplaints@dot.gov

C. Discriminatory Act

When Mountaineer decided to place the natural gas pipeline in the longitudinal extent of the Route 9 Bikepath, a multi-modal feature that was designed into the federally-funded Route 9 extension from Martinsburg to Charles Town, they were doing a very unusual thing. We have come up with no other example of a gas pipeline that was--after the fact--installed into a newly built federal-dollar bike path. There are some examples, in congested older locations in New York and New Jersey, where a bike path was built alongside an older highway that shared a utility such as natural gas, sewer, or water. But none has been found that purposefully used a bike path right of way that paralleled a limited access highway for running a gas pipeline.

We believe that is not the purpose of multi-modal projects such as bike paths, funded by the federal government. The ease with which Mountaineer was able to lay their pipe (there were no shared use--they blocked the path off, preventing public access for weeks at a time ([Exhibit ZZ](#)) and the fact that no construction access road had to be built, as they could drive their equipment up onto the paved bike path ([Exhibit AAA](#)) resulted in a very quick installation. This impacted the Cemetery because with the WVDEP granting the construction stormwater permit as fast as they did, and with WVDEP obscuring the path details and refusing to hold a public hearing, no one knew what was happening until it was all over.

This adverse effect was discriminatory in that it meant the burden of having a gas pipeline run alongside the African American Cemetery was a burden not shared by the majority of the citizens of Berkeley County and Jefferson County. However, these same citizens will be able to enjoy the benefits of natural gas, and can now plan their home renovations to take advantage of that newly available resource and disconnect those tiresome old propane log fireplaces in their sunken living rooms.

In addition, maintenance provisions require bicycle and pedestrian facilities built with Federal funds to be maintained in the same manner as other roadway assets.

- Public rights-of-way and facilities are required to be accessible to persons with disabilities through the following statutes: Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. §794) and Title II of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§ 12131-12164).

- The DOT Section 504 regulation requires the Federal Highway Administration (FHWA) to monitor the compliance of the self-evaluation and transition plans of Federal-aid recipients (49 CFR §27.11), including Title VI compliance. The FHWA Division offices review pedestrian access compliance with the ADA and Section 504 as part of their routine oversight activities as defined in their stewardship plans. They have to begin monitoring for Title VI compliance as well, now that a precedent has been set of using bicycle and pedestrian features to quickly throw down fracked-gas distribution lines to the Rockwools of the world.

D. Authority

The Office of Civil Rights manages FHWA responsibilities with respect to Title VI, including assuring that FHWA Division Offices ensure that all Recipients (State Transportation Agencies) have an approved Title VI Plan and submit Annual Update Reports. Additionally, the Division Offices are responsible for ensuring that the State Transportation Agencies are implementing an effective Monitoring Program of their Subrecipients' efforts to effectively implement Title VI. FHWA's National Title VI/Nondiscrimination Program Manager is responsible for coordinating the effectiveness of FHWA's monitoring activities and will partner with other Federal Program Offices and USDOT Modal Agencies (as appropriate) to address opportunities for improved implementation of the Title VI/Non-discrimination Program.³³

E. Request

Based upon the foregoing, complainants request that the FHWA accept this complaint and conduct an investigation to determine whether WVDOT violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and 40 C.F.R. by allowing, either through an affirmative action or a failure of monitoring and oversight, the construction of a natural gas

³³ https://www.fhwa.dot.gov/civilrights/programs/title_vi/

pipeline in the longitudinal stretch of a FHWA-funded bicycle and pedestrian path adjacent to a FHWA-funded limited access highway; said allowance resulting in a disparate harm to an African American Cemetery and its descendents. If a violation is found and WVDOT is unable to demonstrate a substantial, legitimate justification for its action and to voluntarily implement a less discriminatory alternative that is practicable, complainants further petition the FHWA to initiate proceedings to deny, annul, suspend, or terminate financial assistance and program support of WVDOT.

IX. RECIPIENT: JEFFERSON COUNTY COMMISSION

The Jefferson County Commission (JCC) is a public corporation, acting on behalf of the County of Jefferson, a political subdivision of the State of West Virginia, validly created and existing under the Constitution and laws of the State, and is authorized and empowered by the provisions of the Constitution and laws of the State.

The JCC agency, Jefferson County Historic Landmarks Commission (JCHLC); JCC department, Jefferson County Office of Engineering; and the Jefferson County Clerk are listed in this complaint for failure to follow policies and procedures or have established policies and procedures to prevent discrimination, which has resulted in disparate impacts to the Cemetery; its Descendants; African American history, culture, and heritage.

A. Federal Funding

Federal funding has benefited Jefferson County and the JCC mostly as pass through funding from West Virginia state agencies. As listed in the Department of Justice manual, “The financial assistance does not have to relate to a program in which the complainant participates or seeks to participate or used for the complainant’s benefit. Rather, an agency only has to prove that the entity received federal financial assistance when the alleged discrimination occurred.”³⁴ Jefferson County Historic Landmarks Commission received direct grants when the alleged discrimination occurred.

Jefferson County Commission Federal Funding 2017 - 2019

³⁴ Department of Justice Manual, page 27 <https://www.justice.gov/crt/case-document/file/934826/download>

Fed. Agency	Action Date	Award ID	Amount
DOH/FHA	01/19/2017	540340063Z001	\$80,000
DOH/FHA	06/05/2017	540340030Z001	\$336,000
DOH/FHA	06/29/2017	540340063Z001	\$240,000
DOH/FHA	05/31/2017	5409WV003M302	\$355,261
DOH/FHA	04/10/2018	540340063Z001	\$80,000
DOH/FHA	04/10/2018	540051046MS30	\$79,946
DOH/FHA	05/04/2018	540230006Z240	\$655,324
DOH/FHA	05/23/2018	540230006Z240	\$500
DOH/FHA	08/13/2018	540009174L20E	\$2,881
DOH/FHA	01/23/2019	693JJ21930000Z231 WV0009226	\$40,000
DOH/FHA	04/01/2019	540164004MS5E	\$9,311
DOH/FHA	09/04/2019	693JJ21930000ZS50 WV0929001	\$162,000

1. The Jefferson County Historic Landmark Commission

The Jefferson County Historic Landmark Commission has received at least three grants from the Department of the Interior, through the National Parks Service, during the time described in this section.

Jefferson County Historic Landmarks Commission DOI/NPS Federal Funding 2017 - 2019

Action Date	Award ID	Amount
04/14/2017	P17AP00098	\$44,526
08/08/2017	P17AP00011	\$956,625
03/07/2019	P19AP00006¹	\$613,930

¹ In partnership with Jefferson County Farm Land Protection Board. Fund description “To assist States and local communities acquire and preserve threatened battlefield land from the Revolutionary War, War of 1812, and Civil War.”

B. Timeliness of Complaint

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving Federal financial assistance must be filed within 180 days after the alleged discriminatory act. The Complainants assert that the most recent adverse interaction with the JCHLC and the Cemetery occurred on June 18, 2019 at the JCHLC’s bi-monthly meeting. ([Exhibit BBB](#)) According to the minutes “Mr. Koonce raised concern about the African American graveyard in Kearneysville that is adjacent to both Rockwool and pipeline construction. Mr. Burke confirmed there is nothing the JCHLC can do”.

The Complainants assert that the JCHLC should have initiated a “Council review of Section 106 Compliance” with the Advisory Council of Historic Preservation per the process described in 36 CFR § 800.9 on or after this June 18, 2019 meeting. It appears that the JCHLC has been unclear in their role concerning the Cemetery and if they should have been engaged in Section 106 clearance procedures. In the face of this uncertainty, JCHLC should have contacted the Advisory Council of Historic Preservation to initiate a compliance review. They failed to do so, thereby causing an adverse impact on the Cemetery, which may have been re-evaluated under a reopened Section 106 procedure, had the Council found the non-compliance that occurred in their Review.

The 180 day limitations period ends December 18, 2019. This complaint was sent by overnight delivery to Director, Office of Civil Rights, Department of the Interior, 1849 C Street, NW, Washington, DC, 20240 on September 23, 2019.

2. Jefferson County Office of Engineering

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving Federal financial assistance must be filed within 180 days after the alleged discriminatory act. The issuance of Mountaineer’s Registration No. WVR311281 under WV

General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities, occurred on March 29, 2019. The 180 day limitations period ends September 24, 2019. This complaint was sent by overnight delivery to U.S. EPA External Civil Rights, Compliance Office (2310A), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460 and emailed to Title_VI_Complaints@epa.gov on September 23, 2019.

3. Jefferson County Clerk

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving Federal financial assistance must be filed within 180 days after the alleged discriminatory act. The issuance of Mountaineer's Registration No. WVR311281 under WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities, occurred on March 29, 2019. The 180 day limitations period ends September 24, 2019. This complaint was sent by overnight delivery to U.S. EPA External Civil Rights Compliance Office (2310A), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460 and emailed to Title_VI_Complaints@epa.gov on September 23, 2019.

C. Discriminatory Acts

1. The Jefferson County Historic Landmarks Commission

The Jefferson County Historic Landmarks Commission (JCHLC) is an agency of the Jefferson County Commission and operates under the authority granted to landmarks commissions by the West Virginia Legislature, WV Code § 8-26A-7. The Landmarks Commission focuses on heritage education and tourism, historic preservation, and historic resource development. JCHLC's mission is to preserve historic sites, structures, and rural landscapes in the unincorporated areas of Jefferson County and educates the public about the county's heritage. Under federal regulations regarding Section 106, 36 CFR § 800.2(3)(c), JCHLC is considered a "Consulting Party - Local Government Representative" and allowed to serve as a substitute for public involvement in the Section 106 process.

a. The Jefferson County Historic Landmark Commission failed to respond to a WVSHPO solicitation for Section 106 Public Comment regarding the Rockwool project, thereby denying the public the opportunity to participate in the Section 106 procedure.

Regardless that the City of Ranson should have been contacted to provide public comment for the area within their jurisdiction, there was no reply or public comment from the agency that was solicited for comment, JCHLC. This violates 36 CFR § 800.2(d)(2)(2) which requires that the public be informed about an undertaking and its effects on historic properties. “The agency official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input.”

In WVSHPO’s April 3, 2017 reply letter ([Exhibit Y](#)) to ERM, Inc. which initiates the Section 106 Process, special mention is made that Federal regulations require public comment. WVSHPO also requires that ERM, Inc. specifically contact the Jefferson County Historic Landmark Commission (JCHLC) and request comment on the project. In this letter, the Cemetery (WVSHPO ID# 46JF507) is specifically mentioned as a potential historic place that requires evaluation for inclusion on NRHP.

A July 24, 2017 reply letter ([Exhibit DD](#)) to WVSHPO from Paige Gardner of The Thrasher Group, Inc. (A sub-consultant hired to perform the Phase 1 Archaeological Survey), supplies a copy of the letter sent on June 5, 2017 ([Exhibit EE](#)) to JCHLC requesting public comment. There are three NRHP properties that are listed on this letter, but the Cemetery is NOT listed nor is its ID number given. It is impossible to know if the Cemetery was purposely excluded from this letter, however, its exclusion certainly would have made evaluation of the Cemetery by the JCHLC unlikely.

Ms. Gardner reports that she received no comments or communications in response from JCHLC within 30 days. It appears that no other attempts were made to contact the JCHLC regarding this project. In the digital era we live in, it must be asked why contact via e-mail or telephone was not attempted. Both an email address (landmarkscommission@jeffersoncountywv.org) and a telephone number (304-728-3195) are

listed on the JCHLC website. Why didn't Ms. Gardner try to make contact through another method?

Regardless of the reason, the result was that no public comments were received from JCHLC. It appears that WVSHPO accepts this singular contact attempt as satisfying the requirement for public comment as they made no response to the July 24th letter. It appears that no other attempts were made to alert the public at large to the Section 106 review underway. Had any attempt been made to alert the public through usual means, i.e. Legal Notice in the local paper of record (The Spirit of Jefferson), it is likely that members of the community and descendants would have responded.

Furthermore, there is no proof provided that the June 5th letter was in fact received by JCHLC. There is no delivery confirmation receipt or evidence of a postmarked envelope included with the July 24th letter. A review of JCHLC's meeting minutes from the past several years reveals that projects under Section 106 review are discussed and evaluated during the JCHLC's bimonthly meetings. There is no mention in the July 12, 2017 meeting minutes of the June 5th letter or the Section 106 process for Project FR# 17-437-JF, AKA "Project Shuttle" ([Exhibit FF](#)). The first time the Rockwool/Roxul project is discussed by JCHLC occurs on December, 18 2017 in which JCHLC member Ben Horter reports that "They are already moving dirt. Their 106 was approved". ([Exhibit GG](#)) To be clear, the Section 106 process was not closed until 7 months later in late June 2018.

The Cemetery was disparately impacted by the lack of public comment in that the local community, and even those historically-minded individuals on the JCHLC, were unaware of the imminent threat of development until construction had already begun. Had the public been alerted in advance, descendants and concerned citizens would have had the opportunity to voice opposition to the project and possibly been able to uncover the historic importance of the land parcel and Cemetery in particular.

b. JCHLC incorrectly assumed that the Rockwool project was not in their purview, when in fact three nearby NRHP listed properties and the Cemetery are located in the Middleway District of Jefferson County. JCHLC was directly asked to comment on the three listed NRHP properties, and should have been asked for a comment on the Cemetery, which still required a determination of eligibility for inclusion on NRHP.

There appears to be confusion over what government entity has authority to make public comments for this project. The entirety of the Rockwool project is contained in the Jurisdiction of Ranson, not the Middleway District of Jefferson County as was put forth by ERM, Inc. when the Section 106 process was initiated and continued to be incorrectly located in Middleway in subsequent communications and reports. The request for Section 106 public comments should have been sent to Ranson City Council in addition to the JCHLC, which had jurisdiction over three nearby NRHP properties and the Cemetery.

In the JCHLC October 10, 2018 meeting minutes ([Exhibit CC](#)), “[REDACTED] suggested the HLC membership, as County Commission appointed agents, are able to request any documents necessary to make an informed decision relating to their decision-making processes.” “Mr. Burke responded to [REDACTED] and indicated the property [Rockwool] is within a municipal boundary [Ranson, WV] and, thus, not under the jurisdiction of the HLC.” The suggestion is made that “Once Rockwool chose Ranson instead of the county property, the county commission took no further part [in the process].”

It is fair to assume that Ranson is responsible for monitoring historic places within its jurisdiction. Under the Section 106 regulations, 36 CFR § 800.2(c)(3) - Participants in the Section 106 process: “Under other provisions of Federal law, the local government may be authorized to act as the agency official for purposes of section 106.” However, Ranson does not have a committee or council dedicated to historic landmarks in its jurisdiction. In this case, the Section 106 request for public comment for the Rockwool project, should have been addressed to the City Council of Ranson. Rockwool had been working intimately with the City of Ranson and knew well that their property was located in Ranson, why was this error not addressed by Rockwool or its contractors?

Since JCHLC denies responsibility for evaluating this particular property, and the municipality in which the property is located does not have an established entity to provide comments on historic places, and no effort was made by WVSHPO or ERM, Inc. to contact Ranson, then it is logical to conclude that the Section 106 requirement for public comment was not met.

c. The December 2017 Meeting should have triggered the JCHLC to initiate a “Council review of Section 106 Compliance” with the Advisory Council of Historic Preservation per the process described in 36 CFR § 800.9.

Regardless of the jurisdiction confusion regarding the Rockwool property, which is indeed located in Ranson WV, the Cemetery is located in the Middleway District of Jefferson County, and falls within the purview of the JCHLC. The JCHLC neglected their responsibility to evaluate the Cemetery when they incorrectly assumed that none of the aspects of this project were within their authority to evaluate. In fact, the first mention of this project is at the December 13, 2017 ([Exhibit GG](#)) meeting. At this meeting, JCHLC member Ben Horter reports “Roxul is building a rock wool insulation factory in the Bardane area. Horter attended a breakfast meeting at Hollywood Casino. They are already moving dirt. Their 106 was approved. This is part of the National Preservation Act - any federal undertaking must comply and take into account potential damage to historic resources.” It is unclear why the JCHLC does not take the initiative here to understand how the Section 106 could have been approved without their input, and failed to initiate a “Council review of Section 106 Compliance” with the Advisory Council of Historic Preservation per the process described in 36 CFR § 800.9, to ensure compliance with Section 106 regulations.

The next mention of Rockwool is on August 8, 2018 ([Exhibit CCC](#)). At this meeting, the Committee discusses the Rockwool project’s potential impact on nearby historic properties and votes to send a letter in opposition of the construction. At the following meeting on October 10, 2018 ([Exhibit DDD](#)) five local citizens spoke against the project and the Committee voted to send an opposition resolution to a number of local government bodies. How can WVSHPO accept that the public comment requirement has been satisfied if the singular entity allegedly

contacted for public comment appeared to have no knowledge of the project until a full year later?

This position is inconsistent with the way in which other Section 106 proceedings were handled according to JCHLC meeting minutes. There are numerous examples of JCHLC providing feedback and comments on projects located within city limits. JCHLC even has a “Courthouse Committee”, a committee dedicated to matters relating to the Charles Town Courthouse, which is in the jurisdiction of Charles Town, WV. ([Exhibit EEE](#)) How could JCHLC claim they do not have the authority to proceed? Why did JCHLC absolve themselves of responsibility for this project? Clearly, there is a need to clarify Section 106 protocol at JCHLC to prevent projects and properties from slipping through the cracks again.

This proceeding reveals a large hole in the Section 106 process as it operates in Jefferson County. The recent annexation of parts of Jefferson County by Ranson has created a patchwork of jurisdictions that seems to be unclear even to local officials. The unclear nature of who would have been responsible for providing Section 106 public comments for the entirety of the Rockwool project, which was wholly contained in Ranson but surrounded by County land that hosts three NRHP listed properties and the Cemetery, should be resolved and clarified with all potential participants in the Section 106 process. This confusion, brought on by the incorrect location of the Rockwool facility in the Middleway District and the cross-jurisdictional nature of the Section 106, is no excuse for the fact that the public was not given an opportunity to participate in this Section 106 process.

Complainants argue that the first harms due to inaction caused by JCHLC in 2017 through today’s date have caused an adverse domino effect and “fruit from the poisonous tree” that allowed other government agencies, such as WVDEP and WVDOT, to proceed with approving permits even though the Section 106 procedure had not been completed, which led to irreparable harm to the Cemetery, its burials, its descendants, the archaeological significance, and African American culture and heritage.

2. Jefferson County Office of Engineering

The Jefferson County Office of Engineering is a department of the Jefferson County Commission.

The duties of the Jefferson County Office of Engineering are:

“The Office of Engineering is responsible for the engineering review of both residential and commercial subdivision plats and commercial/industrial site plans for compliance with the Subdivision Ordinance, Floodplain Ordinance, and the Improvement Location Permit Ordinance. This is done in conjunction with the Office of Planning & Zoning’s review with the Subdivision and Zoning Regulations.”³⁵

The Complainants find several erroneous facts to Mountaineer Gas’ recorded easement recorded on April 19, 2019. As described in subsection “[i. Property ownership discrepancies](#)” of section “IV. RECIPIENT: WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION ”incorrect maps were submitted by Mountaineer Gas. One version was submitted to WVDEP and another version was recorded in the Jefferson County Clerk’s Office .

Both map versions are incorrect and if either of these maps and the gas pipeline project was reviewed properly by the Jefferson County Office of Engineering, surely these inconsistencies would have been identified. The majority of the gas pipeline falls within County’s jurisdiction (Middleway District) and a small portion in Ranson jurisdiction. If it is not the Jefferson County Office of Engineering’s responsibility to review and oversee projects that disturb land within their jurisdiction, then whose responsibility is it? We are unsure if their actions or inactions were a failure of Ranson to communicate with their office or dereliction of their duties. Many disparate impact situations occur because government agencies either fail to follow their own policies and procedures or there are not proper policies and procedures in place to follow. Whatever the failure was between Ranson and the Jefferson County Office of Engineering, property that belonged to the A.M.E. Church was usurped and destroyed along with possible graves and any archaeological findings thereby destroying African American heritage, history, and culture.

³⁵ <http://www.jeffersoncountywv.org/county-government/departments/engineering-department>

3. Jefferson County Clerk

The Jefferson County Clerk's office maintains birth, marriage and death records, records documents, and keeps the minutes of the Jefferson County Commissioners.

The Jefferson County Clerk's Mission Statement: "To protect, preserve and maintain the public records, as well as the election process, with integrity and accountability; to support the Constitution of the United States and the Constitution of West Virginia while providing the utmost accurate and professional service to our customers and colleagues."³⁶

From Jefferson County Clerk's document requirements to record deeds:

Deeds (this includes all deed types)

- Completed Sales Listing Form (a printable version of this form is above for your convenience)
- Grantor's signature
- Legal description of the property including district
- An "And Being" paragraph (This is information on the previous owner which includes: name, date, deed book number and page number. This information is necessary in order to follow chain of title.)
- Declaration of Consideration of Value (This is the monetary amount for which the property is sold. If the property is being transferred without monetary value, it must state in the declaration paragraph 'why' it is exempt from transfer tax.)

The Complainants find several erroneous facts in Mountaineer Gas' easement agreement recorded in the Jefferson County Clerk's office on April 19, 2019. As described in subsection "[i. Property ownership discrepancies](#)" of section "IV. RECIPIENT: WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION" "incorrect maps were submitted by Mountaineer Gas. One version was submitted to WVDEP and another version was recorded in the Jefferson County Clerk's Office. Both map versions are incorrect and if the Jefferson County Clerk's office reviewed the easement agreement for accuracy of deed title chain and legal descriptions, surely these inconsistencies would have been identified.

³⁶ <http://www.jeffersoncountywv.org/county-government/elected-officials/county-clerk>

The Jefferson County Clerk's mission statement includes "To protect, preserve and maintain the public records", surely that would include a procedure to verify said records are accurate. The Complainants argue that if procedures were either followed or in place to verify the recorded easement for accurate property ownership, then the discovery of the A.M.E. Church's legal ownership to the property would have been revealed. As stated in the Jefferson County Office of Engineering's section above, failure for government agencies to follow their own policies and procedures or if there are not proper policies and procedures in place to follow, result in disparate impact cases. The Jefferson County Clerk's failure to follow procedures or have established procedures has resulted in the possible disturbance or removal of burials at the A.M.E. Church as well as destroying the archaeological integrity of the area. Destruction to African American culture, history, and heritage has occurred.

D. Request

Based upon the foregoing, Complainants request that the DOI accept this complaint and conduct an investigation to determine whether JCHLC violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, 36 CFR Part 800 and 40 C.F.R. Part 7. If a violation is found and JCHLC is unable to demonstrate a substantial, legitimate justification for its action and to voluntarily implement a less discriminatory alternative that is practicable, Complainants further petition the DOI to initiate proceedings to deny, annul, suspend, or terminate DOI financial assistance to JCHLC.

The Complainants request that a "Council review of Section 106 Compliance" be initiated per the process described in 36 CFR § 800.9, to evaluate three issues 1) Was the Section 106 process satisfactorily completed and compliant 2) Was JCHLC's role or lack thereof was appropriate 3) Was the public comment requirement satisfied if JCHLC made no comment and no other entities or the public were alerted.

2. Jefferson County Office of Engineering

Based upon the foregoing, Complainants request that the U.S. Environmental Protection Agency - Office of Civil Rights accept this complaint and conduct an investigation to determine

whether the Jefferson County Office of Engineering, a department of Jefferson County Commission, violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and 40 C.F.R. Part 7 for failure to review Mountaineer Gas' pipeline construction route (approved by WVDEP on March 29, 2019, Mountaineer's Registration No. WVR311281 under WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities), to ensure accuracy of land records. If a violation is found and the Jefferson County Office of Engineering is unable to demonstrate a substantial, legitimate justification for its action and to voluntarily implement a less discriminatory alternative that is practicable, Complainants further petition the EPA to initiate proceedings to deny, annul, suspend, or terminate EPA financial assistance to Jefferson County Commission and their departments and agencies, and after the conclusion of those proceedings, deny, annul, or terminate EPA financial assistance to Jefferson County Commission and their departments and agencies.

3. Jefferson County Clerk

Based upon the foregoing, Complainants request that the U.S. Environmental Protection Agency - Office of Civil Rights accept this complaint and conduct an investigation to determine whether the Jefferson County Clerk, a department of Jefferson County Commission, violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and 40 C.F.R. Part 7 for failure to review Mountaineer Gas' pipeline construction route (approved by WVDEP on March 29, 2019, Mountaineer's Registration No. WVR311281 under WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities), to ensure accuracy of land records. If a violation is found and the Jefferson County Clerk is unable to demonstrate a substantial, legitimate justification for its action and to voluntarily implement a less discriminatory alternative that is practicable, Complainants further petition the EPA to initiate proceedings to deny, annul, suspend, or terminate EPA financial assistance to Jefferson County Commission and their departments and agencies, and after the conclusion of those proceedings, deny, annul, or terminate EPA financial assistance to Jefferson County Commission and their departments and agencies.

X. CONCLUSION

The Respondents' failure to follow policies and procedures or have established policies and procedures to protect against discrimination and disparate impact, have allowed the Rockwool and Mountaineer Gas construction activities to cause irreparable harm to the Cemetery; its descendants; African American culture, heritage, and history by destroying archaeological settings and significance of these burial grounds.

It is unclear to the Complainants whether the harms described herein are either a case of government collusion or complete State and local government breakdown. Whether the situations described are the results of collusion, dereliction of duties, or not having established policies and procedures to protect against discrimination and disparate impact events, proper archaeological assessments were not performed for the Cemetery and the A.M.E Church and the Section 106 of the National Historic Preservation Act (NHPA) was not completed.

Complainants argue that the Respondents' actions and inactions have caused disparate impacts. The first harms of WVSHPO and JCHLC in 2017 to present to not adequately review the Cemetery for historical context and protection caused an adverse domino effect and a "fruit from the poisonous tree" scenario that allowed other government agencies, such as WVDEP and WVDOT, to proceed with approving permits. This led to irreparable harm to the Cemetery and its burials, archaeological significance, and African American culture and heritage. As outlined in "Section VII: Proving Discrimination – Disparate Impact" of the *Title VI Legal Manual*:³⁷

"Finally, the importance of identifying a specific practice does not necessarily mean that practice must be affirmatively undertaken; sometimes the relevant policy or practice could be the failure to do something, or even the failure to have a policy. In other words, inaction can exert a disproportionate adverse effect."

The Respondents, being Federally funded entities, must make every effort to abide by all laws of the Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] and must have the awareness, skills, and training to respect and protect all aspects of a culture's heritage, history, and traditions.

³⁷ <https://www.justice.gov/crt/fcs/T6Manual7>

As described in the African American Burial Grounds Network Act, African American burial grounds and other cultural areas should receive special protections due to the many atrocities that have been committed to their ancestors. We can not let any parts of African American history, culture, and heritage be erased for any reason; especially not to be sacrificed for perceived state/local economic development and individual and/or corporate benefits.

XI. REQUEST

For the reasons stated herein, Complainants respectfully request that

a. The United States National Park Service, Department Of The Interior find the West Virginia State Historic Preservation Office and its sub-agencies in violation of Title VI of the Civil Rights Act of 1964; and

b. The United States Environmental Protection Agency find the West Virginia Department of Environmental Protection and its sub-agencies in violation of Title VI of the Civil Rights Act of 1964; and

c. The United States Department of Transportation and the Federal Highway Administration the West Virginia Department of Transportation and its sub-agencies in violation of Title VI of the Civil Rights Act of 1964; and

Pursuant to the Title VI of the Civil Rights Act, the Complainants seek an immediate injunction and stop work order to be issued by the State of West Virginia and the Respondents to all Rockwool and Mountaineer Gas construction and operating activities to prevent further damage to the Cemetery, its descendants, and African American history and culture until the discriminatory grievances contained herein can be resolved.

XI. COMPLAINANTS' SIGNATURES

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

Signature: _____

Date: 9/21/19

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy
Boyd Carter Memorial Cemetery Descendant

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy
Winchester, VA 22601

Signature: _____

Date: 9/21/19

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy
Boyd Carter Memorial Cemetery Descendant

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy
Charles Town, WV 25414

Signature: _____

Date: 9/23/19

Jennifer King, Chair
Rural Agricultural Defenders
PO Box 445
Kearneysville, WV 25430
304-283-0032

Signature: _____

Date: 9/23/2019

Giuliana Brogna, Treasurer
Rural Agricultural Defenders
PO Box 445
Kearneysville, WV 25430
401-855-1037

Signature: _____

Date: 9/22/19

Susan April, Environmental Specialist
Rural Agricultural Defenders
PO Box 445
Kearneysville, WV 25430
240-675-2385

XIII. EXHIBITS - ATTACHED

EXHIBIT A - BOYD CARTER MEMORIAL CEMETERY & POSSIBLE A.M.E
CHURCH BURIALS, PAGE 1

08162013

Boyd Carter Memorial Cemetery & Possible A.M.E Church Burials

Confirmed Burials in Boyd Carter Memorial Cemetery

Burials	Birth Date	Death Date	Age at Death	Race	Death Certificate	Olive Sostice
(b) (6) Privacy, (b) (7)(C) Enforcement Privacy						

Page 1 of 1

**EXHIBIT A - BOYD CARTER MEMORIAL CEMETERY & POSSIBLE A.M.E
CHURCH BURIALS, PAGE 2**

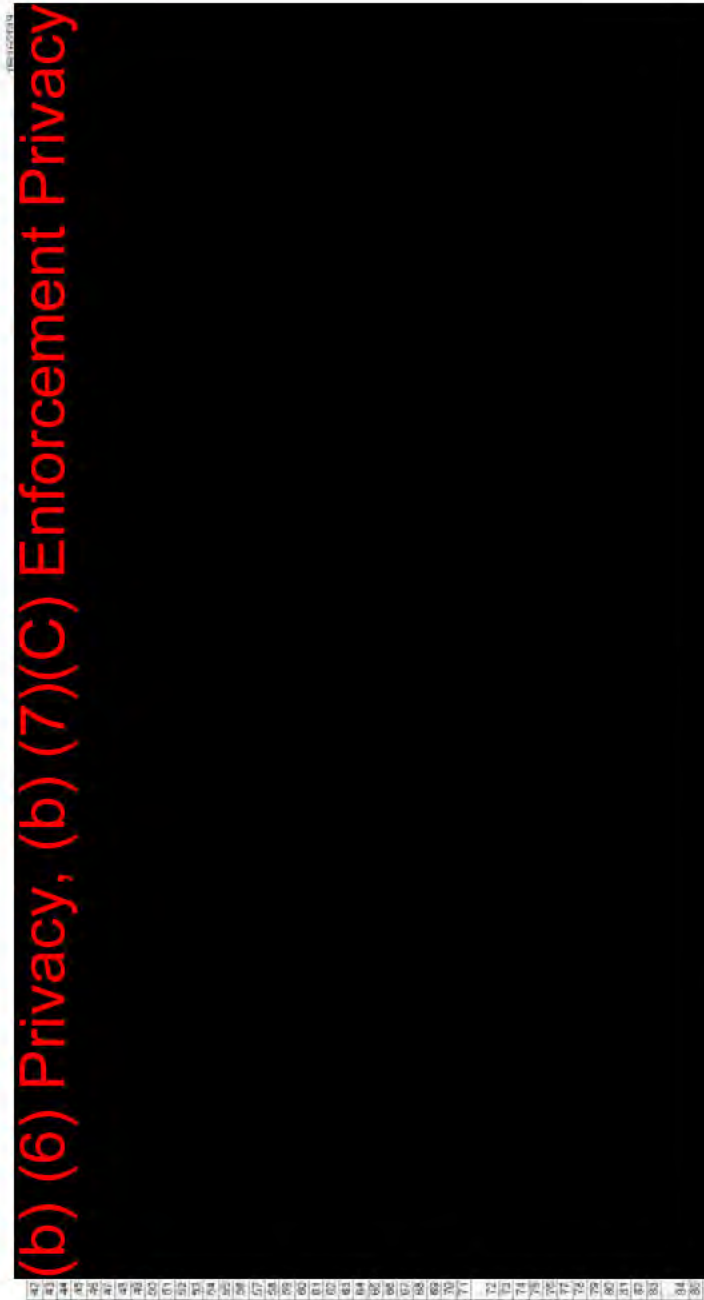


EXHIBIT A - BOYD CARTER MEMORIAL CEMETERY & POSSIBLE A.M.E
CHURCH BURIALS, PAGE 3

08/16/2019

Possible Burials in Boyd Carter Memorial Cemetery & A.M.E Church (see source from Death Certificate)					Death Certificate Source
Burials	Birth Date	Death Date	Age at Death	Race	
(b) (6) Privacy, (b) (7)(C) Enforcement Privacy					

Page 3 of 4

**EXHIBIT A - BOYD CARTER MEMORIAL CEMETERY & POSSIBLE A.M.E
CHURCH BURIALS, PAGE 4**

06/16/2019

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

Page 4 of 4

EXHIBIT B - THE 1902 CEMETERY DEED

Standard Lime & Stone Co.

To: Deed of Bargain and Sale.

Trustees: "Burying Ground"

This Deed made this 31st day of December 1902 between the Standard Lime and Stone Company, a corporation of W. Va., having an office at Baltimore, Maryland of the first part and (b) (6) Privacy, (b) (7)(C) Enforcement Privacy and (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Trustees, all of Jefferson County West Virginia.

Witnesseth:- that for and in consideration of the sum of One Dollar (\$1.00) cash in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, the parties of the first part do grant and convey with covenants of general warranty unto the said Trustees all of their right, title, interest to, and in the following described tract of land situated about 1 mile South East of Kearneysville, Jefferson County, West Virginia.



Beginning at a stake (fig 1); thence S 60-15E at 12 ft. passing through a stone corner to (b) (6) Privacy, (b) (7)(C) Enforcement Privacy in all 14.9 poles to a stone (b) (6) Privacy, (b) (7)(C) Enforcement Privacy corner (fig 2); thence N 6-0E 5.1 pole to a stake now made a corner (fig 3); thence N 60-15 W 12.45 poles to a stake corner to (fig 3); thence S 34-40W 4.58 poles to the beginning containing one rood twenty two and four tenths perches (22.48).

The said lot of ground conveyed to the aforesaid Trustees to be used as a burying ground for colored people and for no other purpose.

To have and to hold the said lot herein conveyed with all rights privileges and appurtenances thereunto belonging including a right to use a road, for ingress or egress to said burying ground, and used by (b) (6) Privacy, (b) (7)(C) Enforcement Privacy through the lands of the Standard Lime & Stone Company unto the said Trustees or their successors forever.

Witness the following signatures and seals.

The Standard Lime & Stone Co., (Seal)

by Daniel Baker (Seal)

President.

State of Maryland,

Baltimore City SS.

I, hereby certify that on this 10th day of January A. D. 1903, before the subscriber a Notary Public of the State of Maryland personally appeared Daniel Baker President of the Standard Lime & Stone Co. and did acknowledge the foregoing deed to be his act.

Witness my hand and Notarial Seal.

State of West Va.,

County of Jefferson SS.

In the Clerk's Office of County Court, Sept, 14th, 1906.

This Deed of Bargain and Sale, dated Dec. 31st 1902 from Standard Lime & Stone Co. to Test:

EXHIBIT C - (b) (6) Privacy, (b) (7)(C) Enforcement Privacy DEED (DEED BOOK 263 PAGE 273) PAGE 2 OF DEED

274

said Lane S 78° 30' E - 392.0 feet, thence crossing the said (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Lane N 31° 08' E - 24.15 feet to a corner in the southern line of the Cemetery Lot, thence with the three following lines of the said Lot N. 60° 30' W - 12.0 feet, thence N 34° 40' E - 75.57 feet, thence S 60° 30' E - 205.43 feet to a corner in the western line of the (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Farm, thence with the said line N. 8° 59' 20" E. - 437.77 feet to the beginning.

THIS CONVEYANCE IS MADE SUBJECT TO SUCH rights of burial as may exist (it being understood that there may be certain bodies buried in the portion of the land herein described near to and along the northeast line of the old cemetery and the northwest line of the old cemetery).

A plat of the (b) (6) Privacy, (b) (7)(C) Enforcement Privacy calculation is hereby attached and made a part hereof.
DECLARATION OF CONSIDERATION OR VALUE

Under penalties of fine and imprisonment as provided by law, the undersigned (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Special Commissioner, who resides on (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Charles Town, Jefferson County, West Virginia, being one of the grantors in this deed and a responsible party familiar with the transaction herein involved, by his signature to this deed does hereby declare that the total consideration paid and secured to be paid for the property conveyed by the document of which this declaration is a part is One Thousand Dollars (\$1,000.00) and that 100 per cent of the real estate herein conveyed is situate in the State of West Virginia

WITNESS the following signatures and seals.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy (SEAL)
Special Commissioner
(b) (6) Privacy, (b) (7)(C) Enforcement Privacy (SEAL)
Special Commissioner

Documentary stamp \$1.10 affixed.
N.Ya Transfer stamps \$2 20 affixed, 11/7/63.

STATE OF WEST VIRGINIA,
COUNTY OF JEFFERSON, TO-WIT

I, J. J. Strider, a Notary Public of and for said County and State do hereby certify that (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Special Commissioner, whose name is signed to the foregoing deed bearing date the 5th day of Nov., 1963, has this day acknowledged the same before me in my said County.

Given under my hand this 7th day of Nov, 1963

J. J. Strider, Notary Public

My Commission Expires:
Jan 25 1966

STATE OF WEST VIRGINIA
COUNTY OF BERKELEY, TO-WIT

I, John W. Small, Jr., a Notary Public of and for said County and State do hereby certify that (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Special Commissioner, whose name is signed to the foregoing deed, bearing date the 5th day of November, 1963, has this day acknowledged the same before me in my said County.

Given under my hand this 3 day of November, 1963.

John W. Small, Jr.,
Notary Public

My Commission Expires:
Feb. 25, 1973.

EXHIBIT D - 05/02/19 CEMETERY SURVEY

05/02/2019 09:15

(b) (6) Privacy, (b) (7)(C) Enforced Privacy

(b) (6) Privacy, (b) (7)(C) Enforced Privacy

PAGE 01/01



EXHIBIT E - GROUND PENETRATING RADAR RESULTS

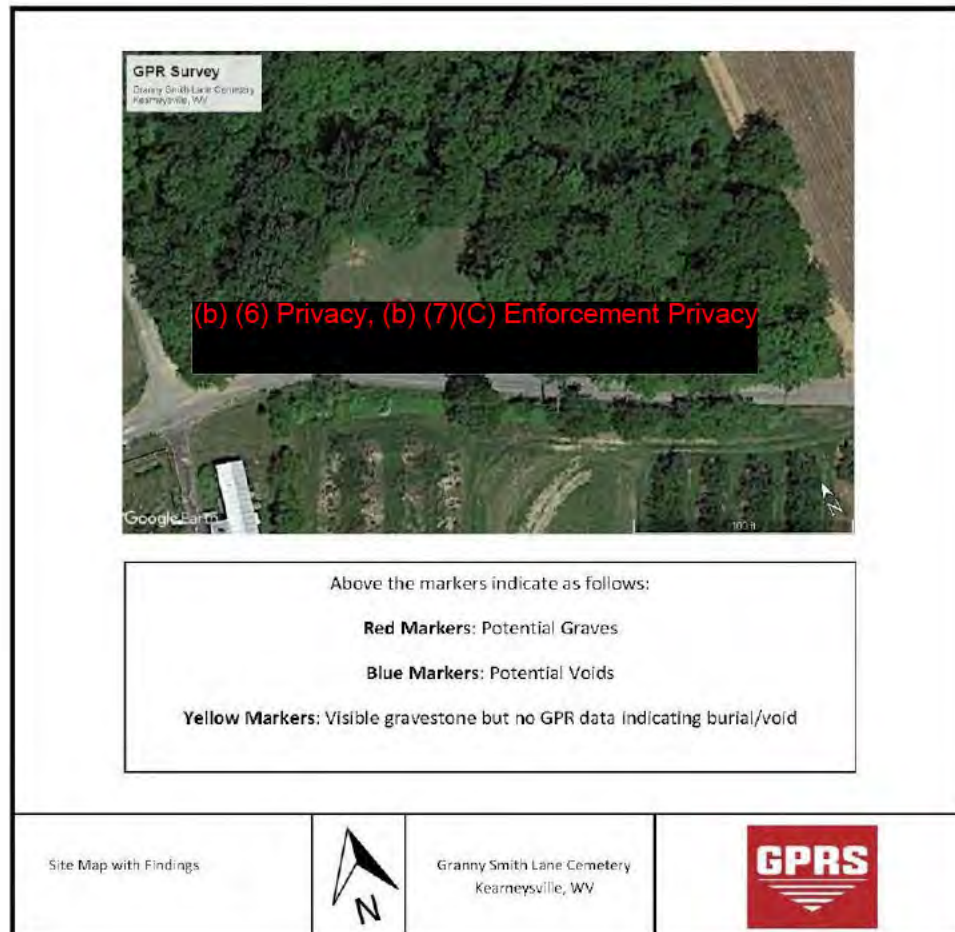


EXHIBIT F - GROUND PENETRATING RADAR RESULTS - GRAVES NEAR ROAD



EXHIBIT G - BURIAL PLOTTING



EXHIBIT H - 1966 JEFFERSON ORCHARDS' DEED, DANDRIDGE OWNERSHIP

129.

460

2772

(b) (5) Privacy, (b) (7)(C) Enforcement Privacy

To: DEED OF B. & S.
Jefferson Orchards, Inc.

THIS DEED made and executed this 1st day of December, 1966, by and between (b) (5) Privacy, (b) (7)(C) Enforcement Privacy parties of the first part, and Jefferson Orchards, Inc., a West Virginia corporation, party of the second part:

WITNESSETH, That for and in consideration of the sum of \$5.00, cash in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties of the first part do hereby grant, bargain, sell and convey and by these presents, have granted, bargained, sold and conveyed, to and unto the party of the second part, with general warranty, the following described real estate, situate in Middleway District of Jefferson County, West Virginia, more particularly described as follows:

"All those certain tracts or parcels of land situate in Middleway District, Jefferson County, West Virginia, together with all improvements thereon and appurtenances belonging thereto, described as follows:

FIRST PARCEL

Those three several tracts of land, which were heretofore conveyed to (b) (5) Privacy, (b) (7)(C) Enforcement Privacy by (b) (5) Privacy, (b) (7)(C) Enforcement Privacy Trustees, by deed dated February 18, 1876, and recorded in the Office of the Clerk of the County Court of Jefferson County, West Virginia, in Deed Book D, page 104, containing in the aggregate about 208 acres, 2 roods and 30 perches, and described as follows:

TRACT NO. 1:

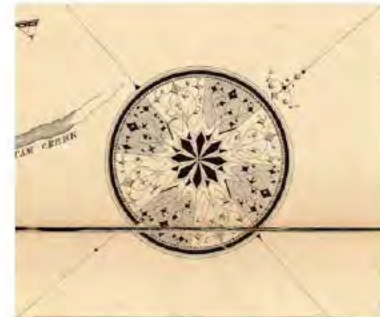
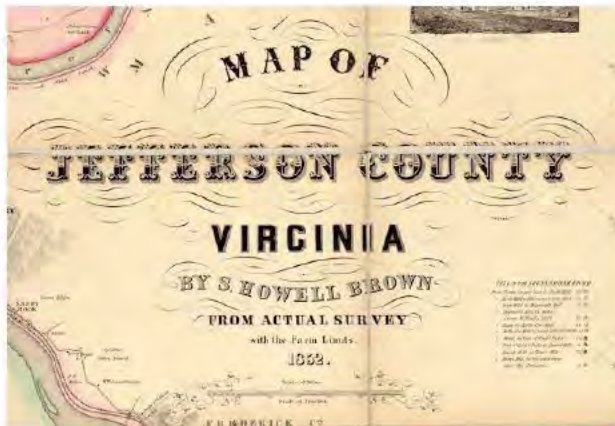
Beginning at a stone in the edge of (b) (5) Privacy, (b) (7)(C) Enforcement Privacy field about 1 pole from the fence in the line of (b) (5) Privacy, (b) (7)(C) Enforcement Privacy Patent, now (b) (5) Privacy, (b) (7)(C) Enforcement Privacy thence with the line of said Patent, now (b) (5) Privacy, (b) (7)(C) Enforcement Privacy S. 64° 40' E. 216.7 poles to a stone set in the ground in the line of said Patent, now (b) (5) Privacy, (b) (7)(C) Enforcement Privacy corner to (b) (5) Privacy, (b) (7)(C) Enforcement Privacy about 2 poles to (b) (5) Privacy, (b) (7)(C) Enforcement Privacy field; thence with the line of (b) (5) Privacy, (b) (7)(C) Enforcement Privacy S. 4° 3/4' E. 142 poles to a stone set in the ground in the line of (b) (5) Privacy, (b) (7)(C) Enforcement Privacy now made corner to the heirs of A. S. Dandridge; thence, leaving Mrs. (b) (5) Privacy and running the division line, N. 64° 3/4' W. 165.7 poles to a stone standing nearly in the center between sundry marked white oaks; thence S. 25° 1/4' W. 133.5 poles to the beginning; containing 160 acres.

TRACT NO. 2:

Beginning at a stone in the line of (b) (5) Privacy, (b) (7)(C) Enforcement Privacy deceased, and corner to (b) (5) Privacy, (b) (7)(C) Enforcement Privacy

EXHIBIT I - 1852 S. HOWELL BROWN MAP OF JEFFERSON COUNTY, WV
CLOSEUP SHOWING DANDRIDGE LAND OWNERSHIP & CEMETERY

Jefferson County, WV 1852 Map Closeups



COMPASS

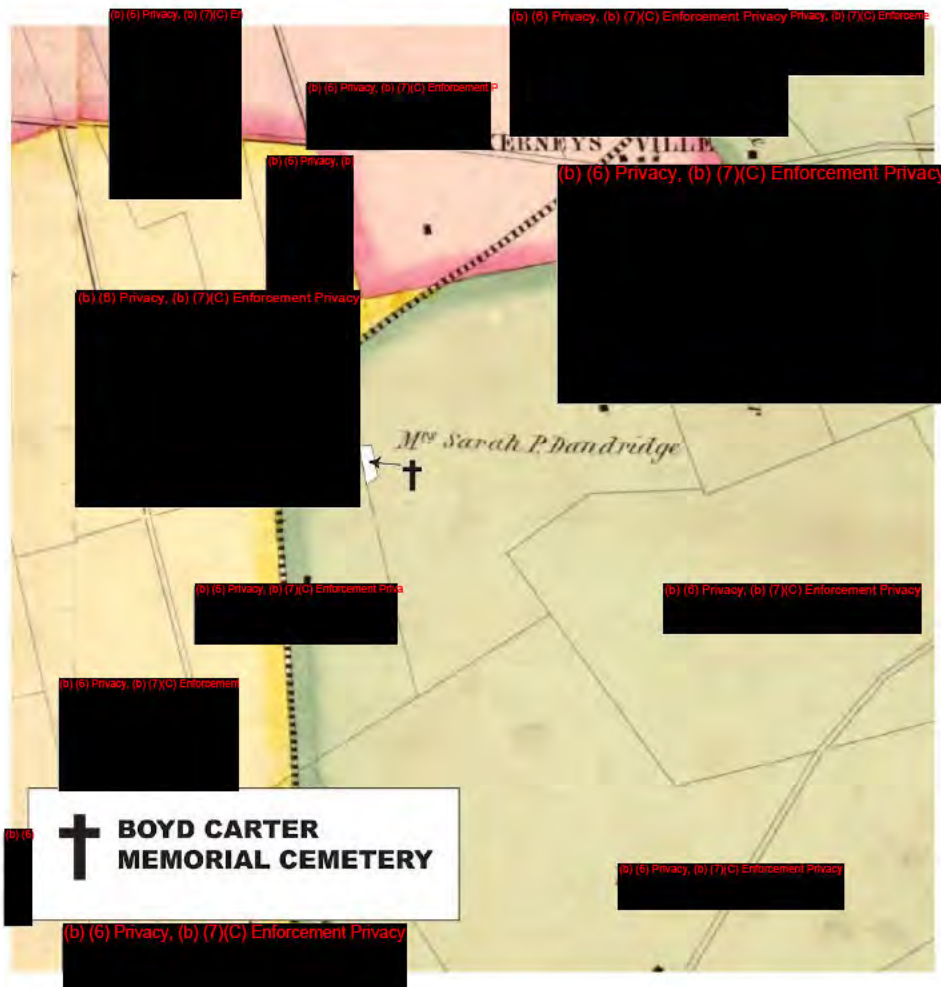


EXHIBIT J - JEFFERSON COUNTY WV TAX MAP OVERLAY WITH 1852 MAP

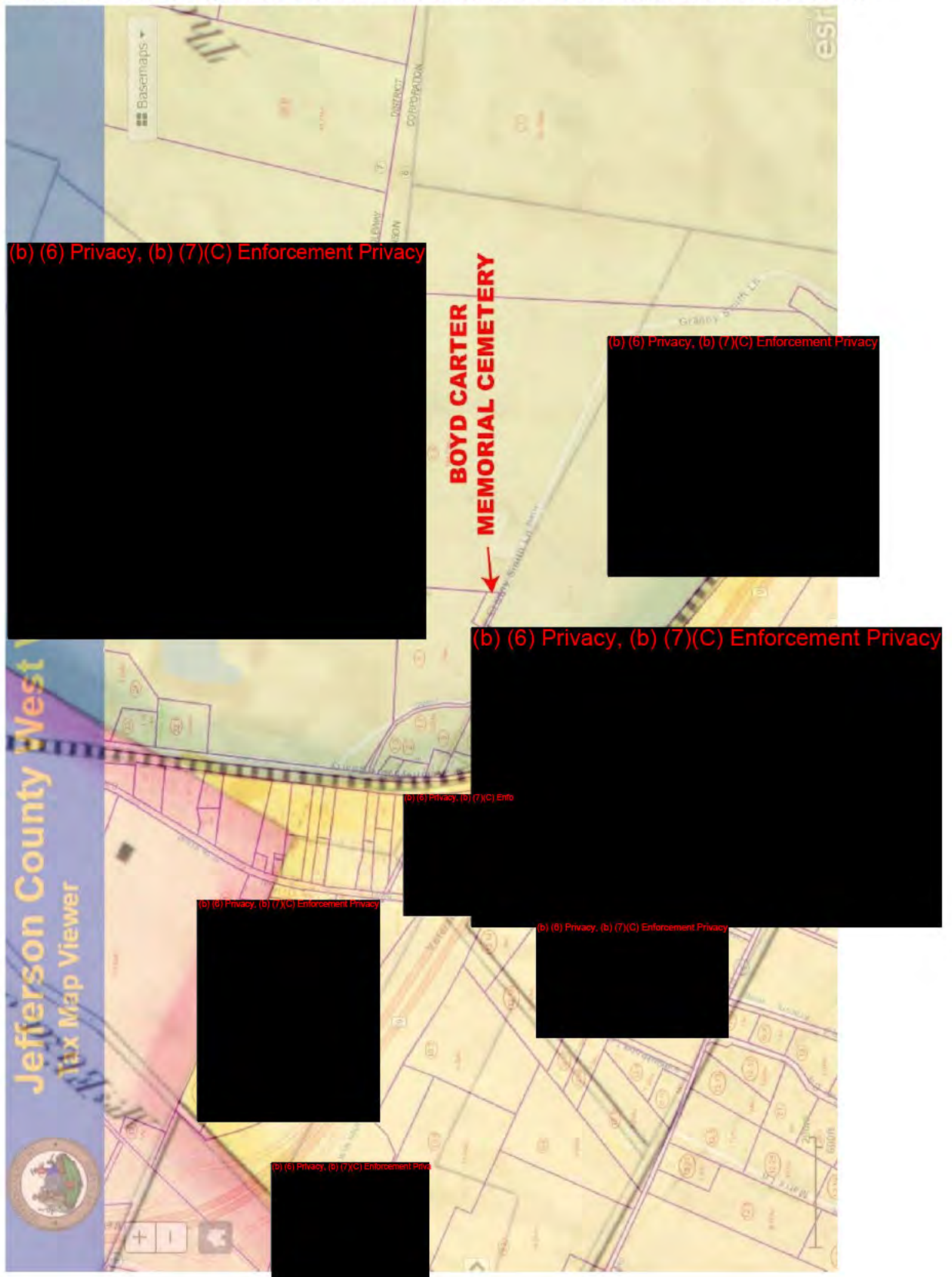


EXHIBIT K - WEST VIRGINIA GEOHISTORY / GEO-EXPLORER PROJECT:
JEFFERSON COUNTY LAND GRANTS SHOWING [REDACTED] OWNERSHIP OF
CEMETERY IN 1763

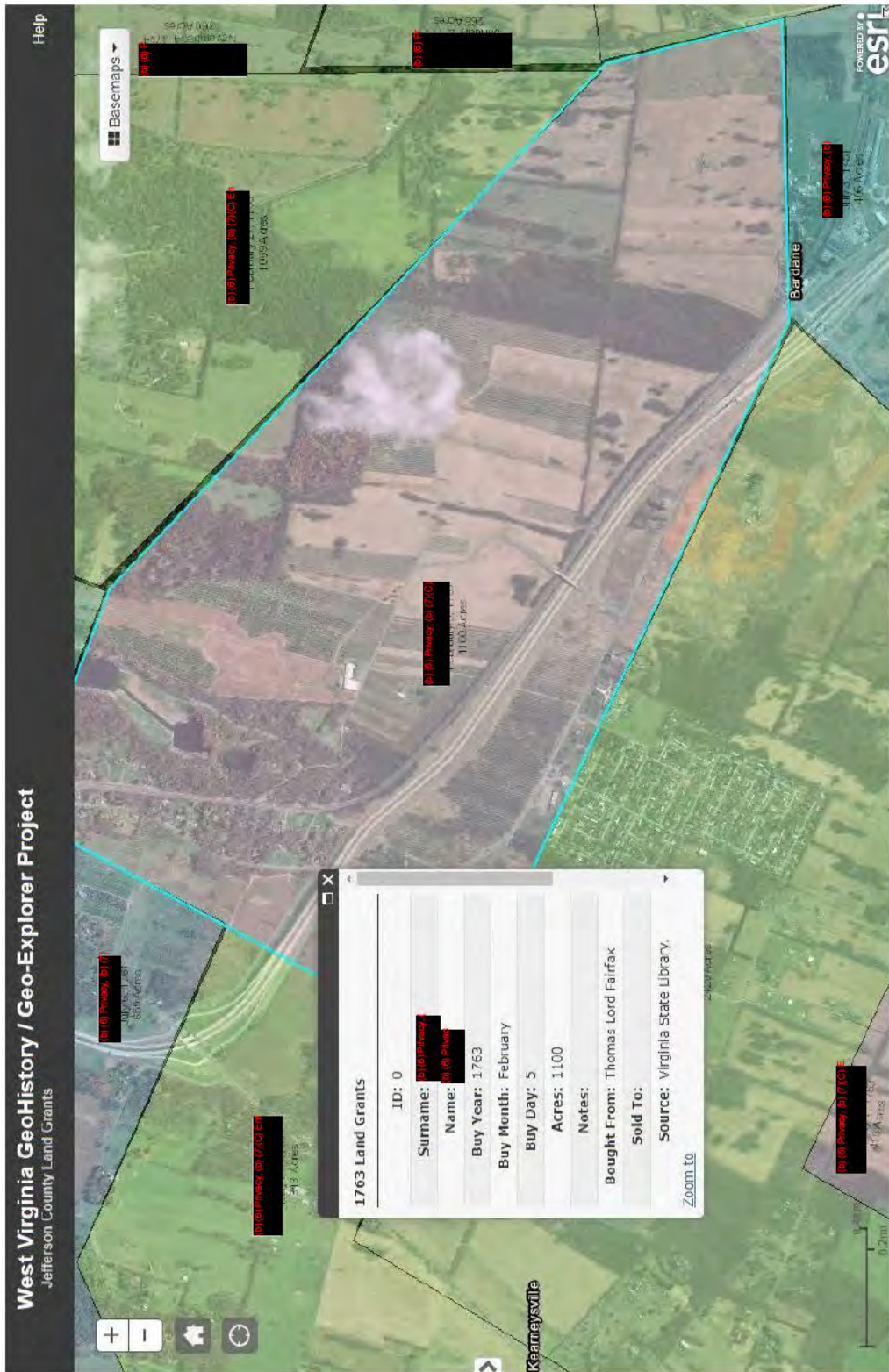
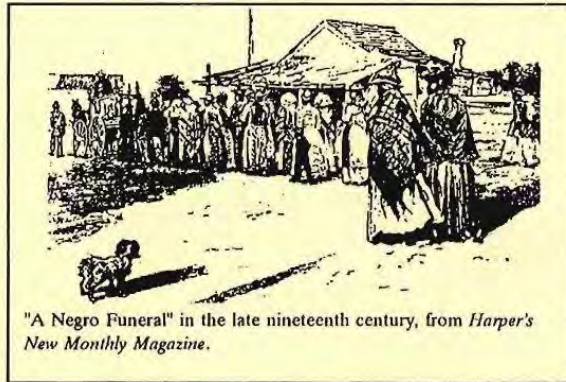


EXHIBIT L - "GRAVE MATTERS: THE PRESERVATION OF AFRICAN AMERICAN CEMETERIES" BY THE CHICORA FOUNDATION, PAGE 4



"A Negro Funeral" in the late nineteenth century, from *Harper's New Monthly Magazine*.

place at night, possibly to allow slaves from neighboring plantations to attend, but just as likely because no other time was available. This may help explain why so many African-American burials continued to be held on Sundays even into the early twentieth century. All of the accounts suggest that the burials were rather significant affairs, with

prayers, singing, and sometimes even an air of a pageant. Sometimes the service was reported to continue until the morning. Many accounts from the mid- and late-nineteenth century reveal that African-Americans were uniformly buried east-west, with the head to the west. One freed slave explained that the dead should not have to turn around when Gabriel blows his trumpet in the eastern sunrise. Others have suggested they were buried facing Africa.

Even where the slaves were buried seems similar. All seem to represent marginal property — land which the planter wasn't likely to use for other purposes. The burial spots have been described as "ragged patches of live-oak and palmetto and brier tangle which throughout the Islands are a sign of graves within, — graves scattered without symmetry, and often without headstones or head-boards, or sticks . . ." A more recent researcher, Elsie Clews Parsons, observes that the African-American cemeteries were:

hidden away in remote spots among trees and underbrush. In the middle of some fields are islands of large trees the owners preferred not to make arable, because of the exhaustive work of clearing it. Old graves are now in among these trees and surrounding underbrush.

Frances Anne Kemble reported that while an enclosure was erected around the graves of several white laborers buried on Butler Island, the graves of the African-American slaves were trampled on by the plantation cattle.

A black cemetery in the South Carolina up country was described by John William DeForest shortly after the Civil War. He commented that while a few marble and brick headstones were present, most were "wooden slabs, all grimed and mouldering with the dampness of the forest. . . ." At the time, some of the wooden slabs had painted names and dates. The paint likely flaked off only shortly before the wood itself rotted away.

EXHIBIT M - "AFRICAN AMERICAN CEMETERIES AND THE RESTORATION MOVEMENT" UNIVERSITY OF GEORGIA, SLAVE BURIAL GROUND CHARACTERISTICS

9/20/2019

African American Cemeteries and the Restoration Movement - Brooklyn Cemetery Project - Death and Human History in Athens

DEATH AND HUMAN HISTORY IN ATHENS

[Baldwin Hall Excavation](#) [Brooklyn Cemetery](#) [Oronoke Hill Cemetery](#) [View all items](#) [Contributors](#)

AFRICAN AMERICAN CEMETERIES AND THE RESTORATION MOVEMENT

African American Burial Traditions

Africa is a heterogeneous continent with various religions, racial identities, and cultural practices. When slaves arrived in America, they came from different tribes. Once in America, slaves were deliberately separated from family members. Then implicitly and explicitly discouraged by their owners from expressing their cultural beliefs. One form of resistance to cultural assimilation was creating their own burial customs.

On plantations, funeral ceremonies usually occurred at night. Since slaves had to work all day, night was the only time for them to participate in the ceremony. But it also allowed neighboring slaves to commune across legalistic borders. This tradition continued into the 20th century. Pre-Civil War, slave owners, not wanting to use their arable land for slave burials, would bury slaves in hidden in remote spots among trees and underbrush. During the ceremony, attendees would perform prayers and sing hymns. Some cemeteries have their headstones facing west for spiritual reasons. Some graves are marked with trees, plants (ex: Yucca) or wooden planks. Believing that since trees would continue after their burial, death would not be their end. By using temporary markers, the residents ensured that there would always be room in the cemetery for future generations. Once buried, slaves from coastal regions would surround the gravesite with shells to enclose the soul's immortal presence. In other areas, offerings could be the last physical object the deceased touched.

Consequently, these traditions, along with the South's segregated past, has lead to the negative perception of Black cemeteries as being abandoned and unkempt.



Figure 1. Although there is no way to know for certain, based on our knowledge of the tradition of leaving everyday items at a gravesite, it is possible that this bottle was left purposely by the family of the deceased.



Figure 2. In Brooklyn Cemetery there are several family plots (see figure 2). At the same time, several families are sprawled across several sections. Family members may not be buried together because Black cemeteries did not typically preserve family groupings.

Preserving Black Cemeteries

In our capitalistic society, we have the tendency to focus on the most profitable options instead of the most humanistic. Landowners may ignore the existence of the cemetery or underestimate the size of the plot to support their building developments. Similarly, the University of Georgia had a recent issue, finding unidentified corpses in their construction zone.

However, most Black cemeteries were not delineated by deeds or legal instruments. Since cemeteries do not provide tax revenue for the county, disincantizing the county from keeping up with the owners of the plots. Ultimately leaving the cemeteries forgotten by the local government. Once reintroduced to the cemeteries, counties have the legal right to choose whether or not to maintain 'abandoned' cemeteries. With that in mind, counties should be sure to include local Black communities in the decision making.

Some Black cemeteries do not have records of names, death certificate numbers or lists of relatives. Let alone a map of where people are buried. At Brooklyn Cemetery we are fortunate enough to have a record of names, death certificate numbers,

[A Short History of Black Athens](#)
[Brooklyn Cemetery: A Brief History and a Tour](#)
[African American Cemeteries and the Restoration Movement](#)
[Brooklyn Cemetery Map](#)
[Brooklyn Cemetery: A Photo Gallery](#)
[Who is Buried in Brooklyn?](#)
[Data Analyses and Graphs](#)
[Timeline](#)

<https://digilab.libs.uga.edu/cemetery/exhibits/show/brooklyn/african-american-cemeteries-an?fbclid=IwAR3euklEHFI0w6q2F7486J0UbAhvXKTA328V...>

1/4

EXHIBIT N - "GRAVE MATTERS: THE PRESERVATION OF AFRICAN AMERICAN CEMETERIES" BY THE CHICORA FOUNDATION, PAGE 5



Example of a stone marker for Albert Doctor, born a slave, in Georgetown County, South Carolina.

Graves were marked in a variety of ways besides wood or stone slabs. Sometimes unusual carved wooden staffs, thought perhaps to represent religious motifs or effigies, were used. Some graves were marked using plants, such as cedars or yuccas, and anthropologists have suggested this tradition may reflect an African belief in the living spirit. This tradition can be traced at least to Haiti, where blacks, probably mixing Christian religion with African beliefs, explain that, "trees live after, death is not the end." Yuccas and other "prickly" plants may also have been used "to keep the spirits" in the cemetery. Other graves were marked with

pieces of iron pipe, railroad iron, or any other convenient object.

At times shells were used to mark the grave. One anthropologist in the early 1890s remarked that "nearly every grave has bordering or thrown upon it a few bleached sea-shells of a dozen different kinds." This practice has been traced back to at least the BaKongo belief that the sea shell encloses the soul's immortal presence. There was a prayer to the mbamba sea shell:

As strong as your house you shall keep my life for me. When
you leave for the sea, take me along, that I may live forever
with you.

Even into the twentieth century some Gullah explained the use of shells on graves



African-American graves on Springfield Plantation, now part of Brookgreen Gardens, in January 1931. Courtesy of Brookgreen Gardens Archives, Murrells Inlet, South Carolina.

EXHIBIT O - THE CEMETERY YUCCAS



(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

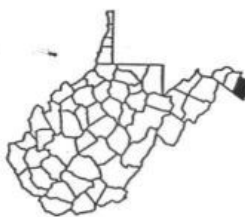


EXHIBIT Q - AFRICAN METHODIST EPISCOPAL CHURCH DISTANCE TO CEMETERY



EXHIBIT R - AFRICAN METHODIST EPISCOPAL CHURCH OF KEARNEYSVILLE SHPO SURVEY, PAGE 1

MBJ RESOURCE #: 042



WEST VIRGINIA HISTORIC PROPERTY INVENTORY FORM

STREET ADDRESS East side of CSX Railroad	COMMON/HISTORIC NAME <input checked="" type="checkbox"/> Common <input checked="" type="checkbox"/> Historic <input type="checkbox"/> Both Methodist Episcopal Church	NO. IN SURVEY JF-0078- 6058	NO. OF BAYS <div style="display: flex; justify-content: space-around;"> <div>1 FRONT</div> <div>3 SIDE</div> </div>	
TOWN OR COMMUNITY Harts Town	COUNTY Jefferson	NEGATIVE NO. 8.7-10	NOT VISIBLE FROM ROAD <input type="checkbox"/>	
ARCHITECT/BUILDER Unknown	DATE OF CONSTRUCTION 1890-1905	STORIES 1		
NAT. REGISTER LISTED <u>n/a</u> STATE REGISTER LISTED <u>n/a</u>	ROOFING MATERIAL Slate	EXTERIOR BUILDING FABRIC Asphalt roll brick siding		
PROPERTY USE OR FUNCTION Abandoned (current); church (historic)	TYPE OF FOUNDATION Poured concrete	STYLE (STAFF USE ONLY)		
SURVEY ORGANIZATION AND DATE Michael Baker Jr., Inc. 501 Parkway View Dr. Pittsburgh, PA 15205 2/14/96	QUADRANGLE NAME Martinsburg			
PART OF WHAT SURVEY West Virginia Route 9				
SITE PLAN MBI 042 and 043 JEFFERSON CO. TAX #MD 4/3 				SITE NO. <div style="border: 1px solid black; height: 80px; width: 100%;"></div>

**EXHIBIT R - AFRICAN METHODIST EPISCOPAL CHURCH OF KEARNEYSVILLE
SHPO SURVEY, PAGE 2**

MBJ RESOURCE #: 042

PRESENT OWNERS (b) (5) DPP, (b) (7) (C), (b) (7) (D)	OWNER ADDRESS (b) (5) DPP, (b) (7) (C), (b) (7) (D) Kearneysville, WV 25430
--	---

GENERAL CONDITION OF PROPERTY
Neglected

ADDITIONS ☒ Yes ☐ No **IF YES, DESCRIBE**

ALTERATIONS ☒ Yes ☐ No **IF YES, DESCRIBE**
Asphalt roll brick siding.

NO. AND NATURE OF OUTBUILDINGS
None.

DESCRIPTION OF PROPERTY (ORIGINAL AND PRESENT)

The Methodist Episcopal Church is one-story high and has a one-room, rectangular plan with a projecting rear choir supported by concrete piers. The abandoned church is one bay wide and three bays deep. The frame church is clad with asphalt roll brick siding over drop wood siding, and the front-gable roof is sheathed in slate. The fenestration consists of one-over-one double-hung lancet arch windows with wood lug sills. A projecting gabled vestibule fitted with a set of double four-panel doors is centered on the front facade. A second entrance is located on the right side of the vestibule. Inside the vestibule, another set of double four-panel doors opens into the church nave. These doors are capped by an arched two-light transom with diagonal patterned stained glass. The church is in a collapsed state and is in an overgrown setting.

HISTORICAL/CULTURAL SIGNIFICANCE

The Methodist Episcopal Church was constructed some time after a parcel of land was purchased by (b) (5) DPP, (b) (7) (C), (b) (7) (D) trustees for the Methodist Episcopal Church of Kearneysville, from (b) (5) DPP, (b) (7) (C), (b) (7) (D) in 1890 (JCDB W:293). Abandoned for many years and in a severely deteriorated condition, the property does not retain sufficient integrity to qualify as a significant historic resource. Therefore, the Methodist Episcopal Church should be considered not eligible for inclusion in the National Register of Historic Places.

BIBLIOGRAPHICAL REFERENCES

Jefferson County Deed Book W: 293.
McAlester, Virginia and Lee McAlester
1990 A Field Guide to American Houses. New York: Alfred A. Knopf.
Phillips, Steven J.
1992 Old House Dictionary. Washington D.C.: Preservation Press.

FORM PREPARED BY
Cynthia A. Liccese and Connie Torbeck

DATE
04/01/96

ADDRESS
Michael Baker Jr., Inc.
501 Parkway View Dr.
Pittsburgh, PA 15205

**EXHIBIT S - AFRICAN METHODIST EPISCOPAL MEETING HOUSE SHPO
SURVEY, PAGE 1**



A. T.

**WEST VIRGINIA HISTORIC PROPERTY
INVENTORY FORM**

STREET ADDRESS Off Oak Tree Road on east side of CSX tracks		COMMON/HISTORIC NAME Concrete-block Dwelling	NO. IN SURVEY JF- 0018 - 0057	NO. OF BAYS 3 FRONT 2 SIDE
TOWN OR COMMUNITY Kearneysville		COUNTY Jefferson	NEGATIVE NO. 4766 (7)	NOT VISIBLE FROM ROAD <input type="checkbox"/>
ARCHITECT/BUILDER		DATE OF CONSTRUCTION ca. 1930s	EXTERIOR BUILDING FABRIC concrete block	
NAT. REGISTER LISTED _____ STATE REGISTER LISTED _____		ROOFING MATERIAL standing-seam metal	STYLE (STAFF USE ONLY) <i>no style</i>	
PROPERTY USE OF FUNCTION Single family residential abandoned		TYPE OF FOUNDATION concrete block	PHOTOGRAPH (2" x 3" CONTACT)	
SURVEY ORGANIZATION AND DATE John Milner Associates, Inc. October 8, 1992		QUADRANGLE NAME Martinsburg		
		PART OF WHAT SURVEY West Virginia Route 9		



Site No. JMA 033

035

**EXHIBIT S - AFRICAN METHODIST EPISCOPAL MEETING HOUSE SHPO
SURVEY, PAGE 2**

PRESENT OWNERS

OWNER ADDRESS

GENERAL CONDITION OF PROPERTY

ruinous

ADDITIONS

☐

YES

☒

NO

IF YES, DESCRIBE

ALTERATIONS

☐

YES

☒

NO

IF YES, DESCRIBE

NO. AND NATURE OF OUTBUILDINGS

None

DESCRIPTION OF PROPERTY (ORIGINAL AND PRESENT)

This house, located off Oak Tree Road in Hart's Town, is a one-story, three-bay, gable-roofed dwelling with a raised basement. The walls are constructed of concrete block and the house is built into a hill. Fenestration consists of three-over-one, double-hung sash, indicating a ca. 1930s construction date. The gable ends are sheathed in weatherboard, and a concrete interior flue protrudes from the roof ridge.

HISTORICAL/CULTURAL SIGNIFICANCE

This concrete-block, ca. 1930s, dwelling is representative of the type of residences commonly built in the African-American village of Hart's Town in the early twentieth century. Abandoned and in poor condition, it is recommended not eligible for the National Register.

BIBLIOGRAPHICAL REFERENCES

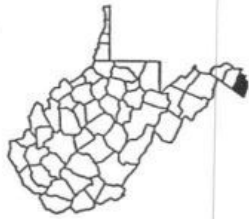
FORM PREPARED BY Margarita J. Wuellner

DATE 10-8-92


ADDRESS John Milner Associates, Inc.
5250 Cherokee Avenue, 4th Floor
Alexandria, VA 22312

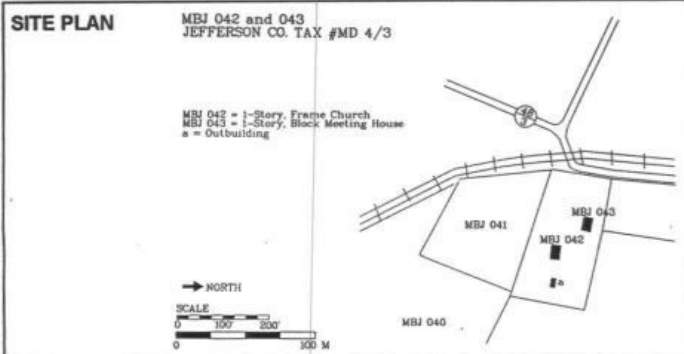
EXHIBIT S - AFRICAN METHODIST EPISCOPAL MEETING HOUSE SHPO SURVEY, PAGE 3

MBJ RESOURCE #: 043



WEST VIRGINIA HISTORIC PROPERTY INVENTORY FORM

STREET ADDRESS East side of CSX Railroad	COMMON/HISTORIC NAME <input checked="" type="checkbox"/> Common <input checked="" type="checkbox"/> Historic <input checked="" type="checkbox"/> Both Methodist Episcopal Meeting House	NO. IN SURVEY SF-0078-0057	NO. OF BAYS 3 FRONT 2 SIDE
TOWN OR COMMUNITY Harts Town	COUNTY Jefferson	NEGATIVE NO. 8.11	NOT VISIBLE FROM ROAD <input type="checkbox"/>
ARCHITECT/BUILDER Unknown	DATE OF CONSTRUCTION 1945	STORIES 1	
NAT. REGISTER LISTED DATE <u>n/a</u> STATE REGISTER LISTED DATE <u>n/a</u>	ROOFING MATERIAL Standing seam metal	EXTERIOR BUILDING FABRIC Concrete block	
PROPERTY USE OR FUNCTION Abandoned (current); meeting house (historic)	TYPE OF FOUNDATION Concrete block	STYLE (STAFF USE ONLY)	
SURVEY ORGANIZATION AND DATE Michael Baker Jr., Inc. 501 Parkway View Dr. Pittsburgh, PA 15205 2/14/96	QUADRANGLE NAME Martinsburg		
	PART OF WHAT SURVEY West Virginia Route 9		



SITE NO.

EXHIBIT S - AFRICAN METHODIST EPISCOPAL MEETING HOUSE SHPO SURVEY, PAGE 4

MBJ RESOURCE #: 1043

PRESENT OWNERS

(b) (5) Privacy, (b) (7)(C) Exemption

OWNER ADDRESS

(b) (5) Privacy, (b) (7)(C) Exemption

Kearneysville, WV 25430

GENERAL CONDITION OF PROPERTY

Neglected

ADDITIONS

IF YES, DESCRIBE

☒ Yes

☐ No

ALTERATIONS

IF YES, DESCRIBE

☒ Yes

☐ No

NO. AND NATURE OF OUTBUILDINGS

None.

DESCRIPTION OF PROPERTY (ORIGINAL AND PRESENT)

The Methodist Episcopal Meeting House is a one-story, rectangular plan, concrete block building that currently stands abandoned. The building is three bays wide and two bays deep. The building is built into a hillside so that an entrance on the front gable leads into the basement, and an entrance on the rear gable end leads into the first floor. The unfinished basement has a dirt floor. The gable ends are clad with weatherboard and the side-gable roof is sheathed with standing seam metal. The fenestration consists of three-over-one double-hung sash windows set into plain wood frames. A concrete block interior chimney straddles the roof ridge.

HISTORICAL/CULTURAL SIGNIFICANCE

The Methodist Episcopal Meeting House, used in conjunction with the neighboring African-American Methodist Episcopal Church, was built circa 1940-1945. The building, which has been abandoned for a long period of time, stands in a deteriorated condition. All of the doors and windows are missing, and the interior has been damaged by exposure to the elements and neglect. The meeting house is a simple vernacular form lacking architectural distinction. The building does not retain sufficient integrity to qualify as a significant historic resource. Therefore, the Methodist Episcopal Meeting House could be considered not eligible for inclusion in the National Register of Historic Places.

BIBLIOGRAPHICAL REFERENCES

McAlester, Virginia and Lee McAlester
1990 A Field Guide to American Houses. New York: Alfred A. Knopf.

Phillips, Steven J.
1992 Old House Dictionary. Washington D.C.: Preservation Press.

FORM PREPARED BY

Cynthia A. Liccese and Connie Torbeck

DATE

04/01/96

ADDRESS

Michael Baker Jr., Inc.
501 Parkway View Dr.
Pittsburgh, PA 15205

**EXHIBIT T - JEFFERSON COUNTY ASSESSOR AND TAX INFORMATION FOR
AFRICAN METHODIST EPISCOPAL CHURCH AND MEETING HOUSE**

Jefferson County West Virginia
Tax Map Viewer

Layers

- ☒ 2020 Parcels
- ☐ 2019 Parcels
- ☐ 2018 Parcels
- ☐ 2017 Parcels
- ☐ 2016 Parcels
- ☐ 2015 Parcels
- ☐ 911 Address
- ☒ Annotation

Identify

Find

Measurement

Print

Directions

Google Street View

Identify

Basemaps

10.2 9.10Ac

11.1 24 Ac

1.1 3.05Ac

7.78Ac

56Ac

9Ac

12.15 11.12Ac

12.4

ROUTE 19

WVA RT9

GRANNY

MIDDLEWAY

RANSON

esri

Tax Year: 2020
Parcel: 07 40003000000000
Deeded Owner: M E CHURCH

Parcel ID: 07 40003000000000
Tax Year: 2020
Deeded Owner: M E CHURCH
C/O:
Owner Address:
City:
State:
Zip: 40404
Deed Book/Page: W/293
Description: KEARNEYSVILLE
Year Built: 0
Stories: 0
Zoom to

**EXHIBIT U - JEFFERSON COUNTY ASSESSOR AND TAX INFORMATION FOR
AFRICAN METHODIST EPISCOPAL CHURCH AND MEETING HOUSE**

ASSESSMENT DISTRICT		LEGAL DESCRIPTION				
MIDDLEWAY DIST. 7		Kearneysville Lot		EXEMPT		
MAP NO.	PLOT NO.	LOT SIZE	ACREAGE			
4	3	90 x 220 Irregular				
OWNER'S NAME		ADDRESS	DATE ACQUIRED	FED. TAX STAMPS	DEED BOOK	PAGE NO.
1	M. E. Church, Colored		5-11-1891		DB-W	293
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						

EXHIBIT V - 05/03/19 USPS DELIVERY RECEIPT OF MR. SURKAMP'S REPORT TO WVSHPO

USPS TRACKING# 9402 3999 8079 9796 96		First-Class Mail Postage & Fees Paid USPS Permit No. G-10
Sender: Please print your name, address, and ZIP+4® in this box® <div style="border: 1px solid black; padding: 5px; margin: 5px;"> <p>Jim Surkamp PO Box 1035 Shepherdstown WV 25443</p> </div>		
RECIPIENT: COMPLETE THIS SECTION 1. Create items 1, 2, and 3. 2. Print your name and address on the reverse so that we can return the card to you. 3. Attach this card to the back of the mailpiece, or the front if space permits. Addressed to: 350N Pierce WV DN of Culture & History JPO 1900 Kanawha Rly Charleston WV 25305 590 9402 3999 8079 9796 96		COMPLETE THIS SECTION ON DELIVERY A. Signature B. Received by (Printed Name) C. Date of Delivery D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No
2. *Number (Transfer from service label) 7019 0160 0000 1074 5531		3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery
PSN 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt		

[Quick Tools](#)
[Mail & Ship](#)
[Track & Manage](#)
[Postal Store](#)
[Business](#)
[International](#)
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[Track Packages Anytime, Anywhere](#)

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Tracking Number: 70190160000010745531 [Remove X](#)

Status

Delivered

Your item has been delivered to an agent at 5:10 am on May 3, 2019 in CHARLESTON, WV 25301.

May 3, 2019 at 5:10 am
 Delivered To Agent
 CHARLESTON, WV 25301

Delivered

Tracking History [▼](#)

Product Information [▼](#)

[See Less](#)

EXHIBIT W - 2005 WV CEMETERY SURVEY FORM FOR THE CEMETERY, PAGE 1

West Virginia Cemetery Survey Form

1. Site Number (OFFICE USE ONLY): 465F507
2. Cemetery Name (Historic / Common, please circle): Jefferson Orchard Cemetery
3. County: Jefferson 4. 7.5' Quadrangle: Martinsburg
5. UTM Zone: 18 Easting 251748 Northing 4362351
6. Ownership: Public: Municipal _____ County _____ State _____ Federal _____
Private: Family _____ Church _____ Denomination _____
Fraternal _____ Other Unknown
7. Burial Population (ethnic composition, general age of individuals, explain):
Euro and African American
8. Public Accessibility: unrestricted x restricted _____ for permission to visit, contact
9. Access into Cemetery: by foot x by car _____
10. Terrain: On the edge of a low, rolling terrace.
11. Bounded by: fence _____ wall _____ hedge _____ other Road on south and west
12. Condition: well maintained _____ poorly maintained x
overgrown, easily identifiable x overgrown, unidentifiable _____
unidentifiable, but known to exist through tradition or other means (identify source)
13. Cemetery Size and Orientation (please give dimensions in feet, and indicate compass direction for long and short axis): 350 feet east/west and 150 feet north/south
14. Historical Background

Cemetery appears to be in original location. Many of the people buried here are veterans of WWI, WWII and Korea. Many headstones have fallen over. Some caskets appear to have been removed. The number of burials (53) is an approximation. Portions of this cemetery are very overgrown, and There are large gaps where no headstones are extant but burials may be there.

15. Form Completed By: J. Blake Date: 8-21-05

EXHIBIT W - 2005 WV CEMETERY SURVEY FORM FOR THE CEMETERY, PAGE 2

Site Number: 46JF507 Cemetery Name: Jefferson Orchard Cemetery

16. Gravestones (Please list the number of gravestones that fit in the categories below. If this is a guess or an approximation, put "circa" before the number. Include photographs and/or sketches of representative decorative carvings.) :

number of headstones 53 burials _____ Footstones ? yes _____ no _____

number of gravestones with burial dates from the 18th century None

19th century None 20th century all

please list the earliest date 1900 most recent date 1994

number of gravestones of each material : slate _____ marble 3

granite 20 sandstone _____ fieldstone _____ other Unknown material

number of gravestones with decorative carvings of skulls none

faces none urns / willows none other (explain) Praying hands (1), crosses (4)

number of gravestones that are readable all eroded _____ badly tilted 3

cracked / broken _____ broken but standing 5

restoration efforts, if any none

17. Please attach : 1) a copy of the topographic quadrangle indicating the cemetery's location, and 20 general photograph (s) of the cemetery showing its setting and / or location.

EXHIBIT X - 03/07/2017 ERM, INC. LETTER TO WVSHPO, PAGE 1

Environmental
Resources
Management, Inc.

204 Chase Drive
Hurricane, WV 25526
(304) 757-4777
(304) 757-4799 (fax)
www.erm.com

March 7, 2017

Attn: Ms. Susan M. Pierce, Director
Deputy State Historic Preservation Officer for Resource Protection
West Virginia Division of Culture and History
The Cultural Center
1900 Kanawha Boulevard East
Charleston, WV 25305-300



Subject: Information Consultation/ Data Request
Proposed Development Parcel; Granny Smith Lane
Kearneysville, Jefferson County, West Virginia
39.374740° N, 77.878192° W
Martinsburg, WV USGS Quadrangle

Ms. Pierce:

Environmental Resources Management (ERM) is supporting the environmental review for potential development of a parcel along Route 9 near to Kearneysville in Jefferson County, West Virginia. ERM recognizes that the West Virginia Division of Culture and History is the State Historic Preservation Office (SHPO), in addition to other agencies, and have the responsibility for consultation regarding the protection of various natural and cultural resources. ERM is pleased to provide the information contained in this submittal for your consultation in providing comments in identifying historic properties that are listed or eligible for listing on the National Register of Historic Places and archeological sites that may be impacted by this project.

The proposed development is located approximately 1.0 miles southeast of the town of Kearneysville, centered as the coordinates of approximately 39.374740° N, 77.878192° W. Currently the scope of work involves an environmental phase I site assessment. The approximate project area is shown on **Figure 1 - Site Location**. **Figure 2 - Property Extent** shows the approximate extent of the proposed development, which would mostly be designated for construction. The property is the site of former orchard operations and the rows of cultivated trees shown in the aerial imagery are no longer present.

Currently the limits of disturbance (LOD) is estimated at 150 acres. Please note, this acreage is a preliminary estimate. Of this 150 acres, approximately 4 acres are trees. ERM is not aware any archeological sites near the area, however, no archeological studies have been conducted. In addition, it is likely that the majority of soils on this site have been altered as this was the former site of an apple orchard.

EXHIBIT X - 03/07/2017 ERM, INC. LETTER TO WVSHPO, PAGE 2

Page 2

Environmental
Resources
Management, Inc.

ERM respectfully requests your initial evaluation of our findings and comments or recommendations for the potential development on this property. If new or additional data is available for the site area, ERM welcomes the opportunity to review that information and incorporate it into our environmental review. If you have any questions concerning this submittal, please contact Matt Hurst at (607) 745-8619 or matt.hurst@erm.com.

Sincerely,

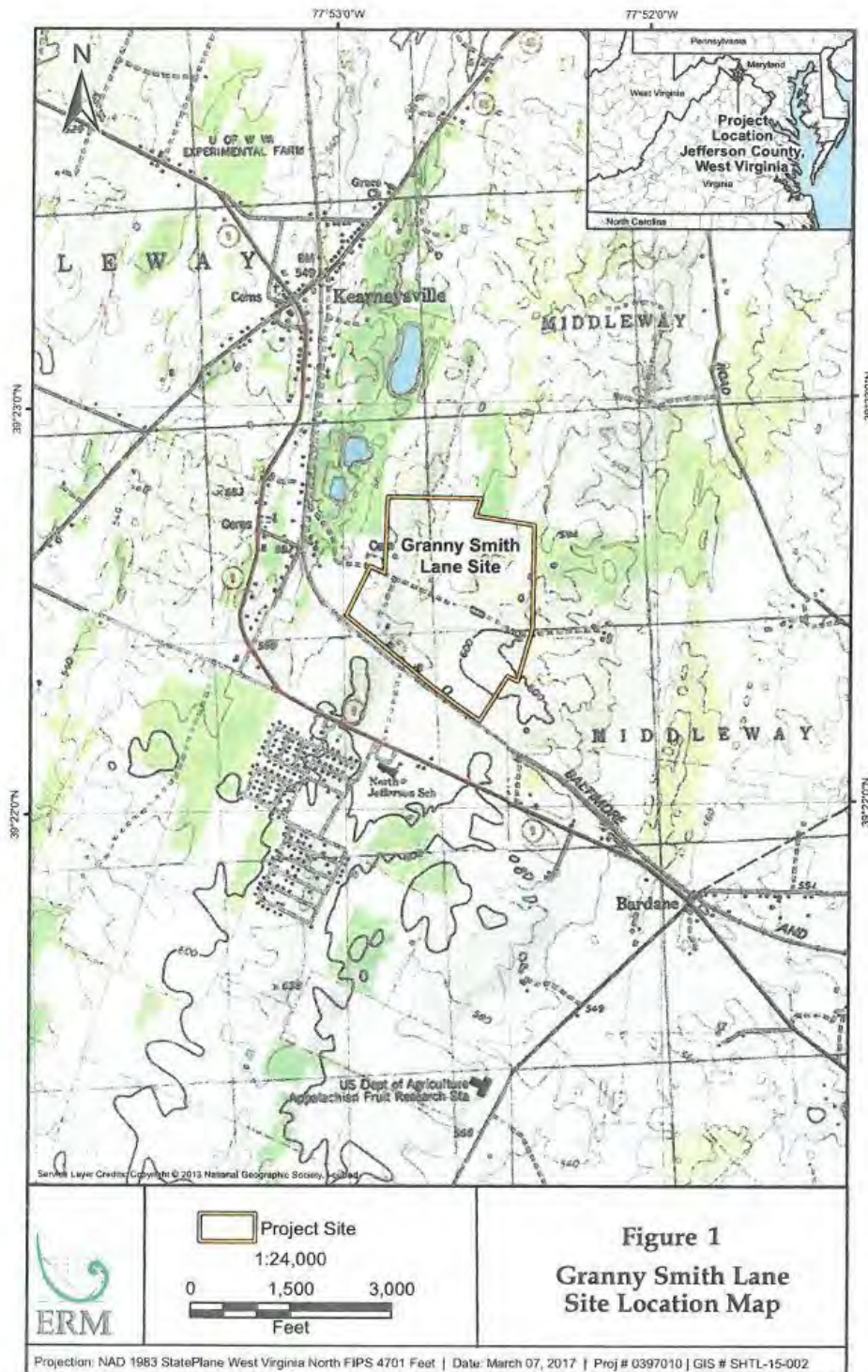


Matt Hurst, PhD
Associate Engineer, ERM

Enclosures



EXHIBIT X - 03/07/2017 ERM, INC. LETTER TO WVSHPO, PAGE 4



WEST VIRGINIA
Division of
Culture and History

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EXHIBIT Y - 04/03/2017 WVSHPO LETTER TO ERM, INC., PAGE 2

April 3, 2017
Dr. Hurst
FR# 17-437-JF
Page 2

Cemetery Resources:

Our records and project mapping note the presence of a cemetery, 46JF507, immediately adjacent to the project area. This cemetery does not have a determination of eligibility for the National Register of Historic Places at this time. Since it is presently not in the direct footprint of the project area only the viewshed would have to be evaluated should the cemetery be determined eligible. We will provide further comment upon receipt of the additional information.

Public Comments:

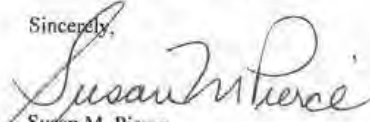
In addition, federal regulations in 36 CFR 800.2(d)(1), 800.2(d)(2), 800.3(e), 800.6(a)(4) all stress the importance of public comment during the Section 106 process. If you have already completed this aspect of the requirements under Section 106, please provide written documentation of that along with any comments you have received. If you have not already done so, please forward a copy of the submitted information for the project to Jefferson County Historic Landmark Commission, allowing them the opportunity to comment on this project. Below is their contact information. Please forward any comments that you receive to this office. If you receive no comments, please indicate that *in writing* to this office. Please contact the below for further information.

Jefferson County Historic Landmark Commission
Post Office Box 23
Charles Town, West Virginia 25414

In addition to our usual comments, your letter requested "recommendations for the potential development on this property." It is our opinion, beyond the concerns mentioned above, that we do not have an interest in making specific recommendations for development this property at this time.

We appreciate the opportunity to be of service. *If you have questions regarding our comments or the Section 106 process, please contact, Carolyn Kender, Archaeologist, or Ernest E. Blevins, Structural Historian at (304) 558-0240.*

Sincerely,



Susan M. Pierce
Deputy State Historic Preservation Officer

SMP/CMK/EEB

EXHIBIT Z - 08/21/201 WVSHPO EMAIL TO JCHLC

Kender, Carolyn M

From: Kender, Carolyn M
Sent: Tuesday, August 21, 2018 3:48 PM
To: (b) (6) Privacy, (b) (7) (C) Enforcement Privacy
Cc: Blevins, Ernest E
Subject: cemeteries in vicinity of Rockwool Project in Jefferson County
Attachments: 46-JF-507.pdf; 46-JF-584.pdf

(b) (6) Privacy, (b) (7) (C) (b) (7) (D)

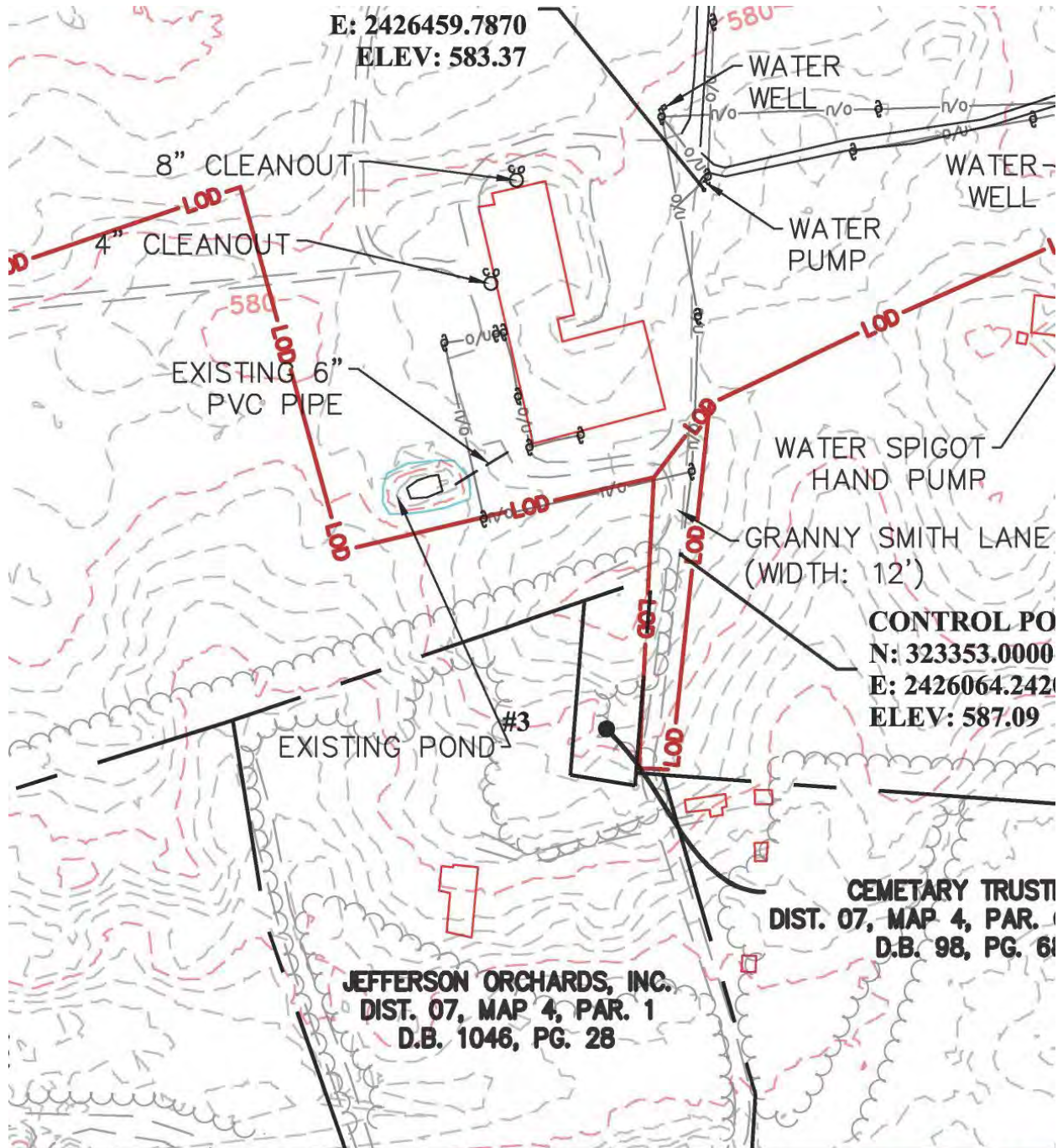
Thank you for notifying our office about concerns the Jefferson County HLC has received regarding potential impacts to a cemetery in the vicinity of the proposed Rockwool/Roxul project located off of Granny Smith Lane in Jefferson County. As I indicated in our phone conversation this morning, we have two documented cemeteries near the proposed Rockwool project area. The closest cemetery is the Jefferson Orchard Cemetery (46-JF-507), which is located immediately adjacent to the western edge of the Rockwool project area. The other cemetery is the St. Paul Baptist Church Cemetery (46-JF-584) and this resource is well outside the project's limits of disturbance. It is our understanding that the Jefferson Orchard Cemetery will not be impacted by the project's construction activities. As per your request, I have attached copies of the cemetery forms for these two resources. Once you have looked over the attached information, please let me know if the Jefferson Orchard Cemetery is the same cemetery that you have received the concerns about. If it is not the same cemetery, can you provide a location of the cemetery in question?

Thank you,

Carolyn M. Kender
Archaeologist
State Historic Preservation Office
WV Department of Arts, Culture, and History
The Culture Center (Building 9)
1900 Kanawha Blvd, East
Charleston, WV 25305-0300
(304) 558-0240 ext. 719

[illegible]

**EXHIBIT AA - WVDEP APPROVED ROCKWOOL STORMWATER
CONSTRUCTION MAP CLOSEUP**



SCALE:	
DRAWN:	DATE:
CHECKED:	DATE:
APPROVED:	DATE:



**EXHIBIT BB - ROCKWOOL AND JEFFERSON ORCHARDS, INC. EASEMENT
AGREEMENT FOR GRANNY SMITH LANE EMERGENCY ACCESS ROAD (DEED
BOOK 1197 PAGE 680), PAGE 1**

5/14/2019

IDX Image Jefferson

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1 of 9																								
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TEMPORARY EASEMENT AGREEMENT FOR EMERGENCY ACCESS

THIS TEMPORARY EASEMENT AGREEMENT FOR EMERGENCY ACCESS ("Agreement") is dated October 20, 2017, and made effective on October 25, 2017 (the "Effective Date"), by and between ROXUL USA INC., a Delaware corporation, having a mailing address of 4594 Cayce Road, Byhalia, Mississippi 38611, hereinafter referred to as GRANTOR, and JEFFERSON ORCHARDS, INC., a West Virginia corporation, having a mailing address of P.O. Box 700, Kearneysville, West Virginia 25430, hereinafter referred to as GRANTEE.

Recitals:

A. Pursuant to that certain Real Estate Purchase and Sale Agreement dated July 7, 2017 (the "Purchase Agreement"), by and between Grantee, as seller, and Grantor, as buyer, Grantor will or has already acquired from Grantee approximately 130 acres of land, more or less, located in Ranson Corporation District, Jefferson County, West Virginia, which is more particularly described and shown on Exhibit A plat attached hereto and made a part hereof (the "Grantor Property").

B. Grantee has or will retain ownership to that certain tract or parcel of land located in Ranson Corporation District, Jefferson County, West Virginia, which is more particularly described and shown on Exhibit A plat attached hereto and made a part hereof (the "Grantee Property").

C. Pursuant to the Purchase Agreement, Grantor agreed to grant to Grantee a temporary easement for emergency access over the Grantor Property for the term of four (4) years to allow Grantee sufficient time to construct a second access road to the Grantee Property.

NOW, THEREFORE, WITNESSETH: That Grantor, for the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration to it in hand paid by Grantee, the receipt whereof is hereby acknowledged, does hereby GRANT, BARGAIN, SELL, CONVEY and TRANSFER to Grantee a temporary, non-exclusive emergency access easement and right-of-way for vehicular ingress and egress during the Term (as defined below), over and across a portion of the Grantor Property being more particularly described on that certain Exhibit A plat attached hereto and made a part hereof (the "Emergency Easement").

TO HAVE AND TO HOLD the same during the Term, as defined below, with all rights and appurtenances thereunto belonging, unto Grantee, its successors or assigns.

PROVIDED, HOWEVER, IT BEING UNDERSTOOD AND AGREED between Grantor and Grantee that the Emergency Easement granted herein shall be subject to the following terms and conditions:

EXHIBIT CC - JCHLC 10/10/18 MEETING MINUTES



Jefferson County Historic Landmarks Commission October 10, 2018 Jefferson County Commission Meeting Room

Members present: Martin Burke, Chairman, H.S. Leigh Koonce, Jack Hefestay, Ben Horter, Tony Troxel.

Guests present: (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Jim Surkamp, (b) (6) Privacy, (b) (7)(C) Enforcement Privacy and three others.

Mr. Burke called meeting to order at 7:04 pm

Public Comment:

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy spoke with regard to his opposition to Rockwool and requested the HLC weigh in regarding the smoke stacks that will be erected.

-Jim Surkamp spoke with regard to Rockwool and highlighted the proximity to the (b) (6) Privacy, (b) (7)(C) Enforcement Privacy property and the Greenback Raid.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy questioned the membership of the HLC and its publication of meeting minutes. She also spoke in opposition to Rockwool.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy spoke against the Rockwool project and highlighted the proximity of her family farm, (b) (6) Privacy, (b) (7)(C) Enforcement Privacy to the project.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy suggested the HLC membership, as County Commission appointed agents, are able to request any documents necessary to make an informed decision relating to their decision-making processes. (b) (6) Privacy, (b) (7)(C) Enforcement Privacy also raised concerns about the Charles Town Presbyterian Church Cemetery and its relocation.

Mr. Burke responded to (b) (6) Privacy, (b) (7)(C) Enforcement Privacy and indicated the property is within a municipal boundary and, thus, not under the jurisdiction of the HLC. Mr. Burke spoke with Seth Rivard, Charles Town City Planner, and Mr. Rivard indicated Charles Town is not taking a position relating to the cemetery.

Mr. Burke introduced Tony Troxel who was appointed by the County Commission to the vacancy created by the resignation of (b) (6) Privacy, (b) (7)(C) Enforcement Privacy.

August Minutes: Mr. Horter moved to approve the minutes as presented. Mr. Hefestay seconded the motion which passed unanimously.

EXHIBIT DD - 07/24/17 THRASHER LETTER TO WVSHPO

THRASHER

July 24, 2017

Mr. Ernest Blevins, MFA
Structural Historian for Review and Compliance
West Virginia Division of Culture & History
West Virginia State Historic Preservation Office
1900 Kanawha Boulevard East
Charleston, West Virginia 25305
304-558-0240, ext. 726
ernest.e.blevins@wv.gov

**RE: Section 106 Review Request: Supplemental Information
Proposed Development Parcel - Granny Smith Lane
Route 9, Kearneysville, Jefferson County, WV
TTG Project #101-030-3203
FR# 17-437-JF**

Dear Mr. Blevins:

Pursuant of Section 106 Clearance and per correspondence letter dated April 3, 2017, The Thrasher Group, Inc. (Thrasher) is writing to your office to indicate that Thrasher did not receive comments, concerns, opinions, or questions from the Jefferson County Historic Landmark Commission within the thirty (30) day comment window regarding the Proposed Development Parcel - Granny Smith Lane Project, FR# 17-437-JF.


Consulting Parties/Public Comments:

Federal regulations in 36 CFR 800.2(d)(1), 800.2(d)(2), 800.3(e), 800.6(a)(4), all stress the importance of public comment and involving local government representatives and organization that have demonstrated interest in historic preservation or the undertaking in the Section 106 review process. Therefore, we forwarded a copy of the submitted information for the above-mentioned project to the Jefferson County Historic Landmark Commission to request comments or opinions on this matter on June 5, 2017 (please see **Attachment A**). The letter requested response within thirty (30) days of the date of the letter (i.e., ending July 5, 2017). No comments, concerns, opinions, or questions were received from the Jefferson County Historic Landmark Commission.

If any further documentation or information is required for this project, or if any questions or concerns should arise, please feel free to contact me at (304)-423-5318 or pgardner@thetrashergroup.com.

Sincerely,

THE THRASHER GROUP, INC.


Paige Gardner
Environmental Scientist

Enclosures (1):

Attachment A - Correspondence with the Jefferson County Historic Landmark Commission

THRASHER

June 5, 2017

Jefferson County Historic Landmark Commission
Post Office Box 23
Charles Town, West Virginia 25414

RE: WVSHPO Section 106 Review
Proposed Development Parcel – Granny Smith Lane
Route 9, Kearneysville, Jefferson County, WV
FR# 17-437-JF

To whom it may concern:

The Thrasher Group, Inc. (Thrasher) is submitting to your office notification of a proposed site development project near the intersection of USGS Charles Town, Martinsburg, Middleway, and Shepherdstown 7.5 minute quadrangles in Jefferson County, West Virginia (WV).

The Proposed Development Parcel – Granny Smith Lane project is located approximately 1.0 miles southeast of Kearneysville, northeast of Route 9, at approximate coordinates 39.375353°N, 77.877569°W; please see **Figure 1: Site Location (USGS)** and **Figure 2: Site Location (Aerial)**, enclosed. The subject property boundary encompasses 145 acres and shows the preliminary extent of the proposed site development, which would mostly be designated for construction. The development of this site is conceptual at this time. The subject property boundary is the site of former orchard operations and the rows of cultivated trees shown in the aerial imagery are no longer present.

The project area and/or its view shed have been previously disturbed by agricultural, commercial, highway, industrial, and residential development and use. A review of the National Register of Historic Places (NHRP) indicated the following places as the closest historic listings:

1. Historic Place Name: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy Farm
Address: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy Kearneysville, Jefferson County, WV
Geographic Coordinates: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy
NPS Reference Number: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy
Date Listed: 12-04-1998
Approximately 0.36 air miles northwest from Proposed Project Site
2. Historic Place Name: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy
Address: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy Shenandoah Junction, Jefferson County, WV
Geographic Coordinates: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy
NPS Reference Number: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy
Date Listed: 12-12-1976
Approximately 0.73 air miles east from Proposed Project Site
3. Historic Place Name: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy Farm
Address: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy Shenandoah Junction, Jefferson County, WV
Geographic Coordinates: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy
NPS Reference Number: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy
Date Listed: 11-04-1994
Approximately 0.62 air miles east from Proposed Project Site

THRASHER

Jefferson Co. Historic Landmark Commission
June 5, 2017
Page 2 of 2

Additionally, the Division of Culture and History's GIS database revealed that a Phase I archaeological survey for FR#05-977-JF was previously conducted on approximately 40 acres in the southeast corner of the property when soil was removed during the construction of Route 9. One archaeological resource, 46JF501, was identified during that survey. This resource was determined not eligible for inclusion in the National Register of Historic Places.

The WV State Historic Preservation Office (SHPO) issued a correspondence letter, dated April 3, 2017, requesting a line-of-sight photograph log and keyed mapping of the proposed aboveground components of this project with the recommendation for the view shed anticipating 2-3 story buildings. The SHPO also expressed concerns that there may be unrecorded archaeological deposits present because mapping denotes the presence of buildings, including an early twentieth century farmstead, within the project area; also, Civil War skirmishes and troop movements took place in the vicinity. As a result, SHPO requested that a Phase I archaeological survey be conducted in the portions of the project area that have not previously been surveyed. Additionally, the SHPO recommended a copy of the submitted information for the project be provided to the Jefferson County Historic Landmark Commission, allowing the opportunity to comment on this project. Field work, including: view shed analysis, cemetery resource review, archaeological pedestrian survey, shovel testing and/or deep testing, and metal detector survey, commenced on May 15, 2017. Upon completion of the field work and any additional research that is conducted, a report of the investigation findings will be produced for submittal to the WVSHPO for review.

Federal regulations in 36 CFR 800.2(d)(1), 800.2(d)(2), 800.3(e), 800.6(a)(4), all stress the importance of public comment and involving local government representatives and organization that have demonstrated interest in historic preservation or the undertaking in the Section 106 review process. Therefore, we are forwarding a copy of the submitted information for the above-mentioned project to the Jefferson County Historic Landmark Commission to request your comments or opinions on this matter. Please respond with any comments, concerns, opinions or questions regarding the Proposed Development Parcel - Granny Smith Lane project within thirty (30) days of the date of this letter to the contact information below:

The Thrasher Group, Inc.
Mrs. Paige Gardner, *Environmental Scientist*
600 White Oaks Boulevard
Bridgeport, WV 26330
(304) 423-5318
pgardner@thrashereng.com

Sincerely,
THE THRASHER GROUP, INC.



PAIGE GARDNER
Environmental Scientist

Enclosures (2):
Figure 1: Site Location Map (USGS)
Figure 2: Site Location Map (Aerial)

600 White

940 • Bridgeport, WV

• 304 • 423-5318 • www.thrashereng.com

EXHIBIT FF - JCHLC 07/12/2017 MEETING MINUTES, PAGE 1



Minutes

Jefferson County Historic Landmarks Commission
7pm – County Commission Meeting Room
200 E Washington Str., Charles Town, WV
July 12, 2017

Members Present: Martin Burke (Chair), Leigh Koonce, Sara Lambert (Secretary) Guests:

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

M. Burke called the meeting into order at 7:00 pm.

Public Comment: None.

Meeting Minutes: Minutes of the May meeting were submitted by Sara Lambert and

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

Acceptance was moved by L. Koonce, seconded by M. Burke, and passed.

Treasurer's Report: M. Burke presented the treasurer's report including the balance and that they will be carrying \$10,000 into the next fiscal year. M. Burke also stated that the Landmarks Commission will be receiving WV Fairs and Festival grant for \$4,752 for events at Peter Burr Farm. M. Burke stated the income and the expenses.

Acceptance was moved by L. Koonce, seconded by S. Lambert, and passed.

FY-18 Budget: M. Burke presented the FY-18 budget and there was discussion on various line items. M. Burke suggested to the commission that they should join the National Association for Preservation Commission. The Landmarks Commission has received two grants. One was from the EWV Community Foundation for the Coyle Cemetery and the other was a WV Humanities grant for the printing of two brochures, "The Battle of Shepherdstown" and "The Shepherdstown Cement Mill". The Commission is still waiting to hear about a grant from the CVB for the John Brown Driving Tour brochure printing.

Acceptance was moved by S. Lambert, seconded by L. Koonce, and passed.

Duffields Depot: The commission discussed what could be a possible outcome for the ownership if Duffield's Depot Inc. ceases to exist. The Commission discussed possible outcomes and decided that more research needed to be done before decisions were made.

Peter Burr Farm Event application for 2018: An application was submitted to JC Parks and Rec to hold the Blue Ridge Arts and Crafts Festival on May 8th, 2018 from 10am to 6pm at the Peter Burr Farm. L. Koonce moved to deny application but there was no second. After discussing the application further, the commission decided that it would be best for more questions to be answered before approving or denying the application.

Our History Our Community endowment fund: M. Burke reported pledges of \$20K. He is preparing a request letter and working with local Chamber of Commerce groups to reach out.

WV GeoExplorer Project: (b) (6) Privacy, (b) (7)(C) Enforcement Privacy would be working on technical support for the Kickstarter Project.

EXHIBIT FF - JCHLC 07/12/2017 MEETING MINUTES, PAGE 2

ANNOUNCEMENTS AND COMMISSIONER REPORTS:

- A. Status of NR nomination – (b) (5) Privacy, (b) (1) (C) Enforcement Privacy currently revising draft paperwork with SHPO.
- B. Historic Preservation Zoning Ordinance: M. Burke reviewed at PC public workshop Tues July 11. Draft Zoning Ordinance is currently in a 2-week comment period.
- C. JC Courthouse Committee: L. Koonce stated committee is waiting for a new judge to be appointed before the next meeting would take place.
- D. Concept Plan Reviews: M. Burke working with WV Highway Dept. on the Rte. 340 extension proposal.
- E. Status of NR nomination – *The Rocks*: (b) (5) Privacy, (b) (1) (C) Enforcement Privacy out of town so will update a future meeting.
- F. (b) (5) Privacy Cemetery grant application: Grant received. Stone mason hired. Walls to be relayed in September
- G. Status of grant application to WV Humanities Council: Grant received.
- H. ABPP Grant for PHF, LLC Tracts: Pass-through grant approved. Land Trust for the Eastern Panhandle to hold easement once (b) (5) Privacy house is torn down. (b) (5) Privacy prepared 106 Compliance Report. Title recorded-on June 29, 2017.

S. Lambert made a motion to adjourn, which was seconded by L. Koonce. The motion passed and the meeting was adjourned at 8:39pm.

EXHIBIT GG - JCHLC 12/13/2017 MEETING MINUTES, PAGE 3

Two months ago, [REDACTED] sent a package to [REDACTED] who is still reviewing the material. [REDACTED] is going to remind his father that this is an active project he would like to advance.

e. Status of Roxul - Section 106 review- Horter

Roxul is building a rock wool insulation factory in the Bardane area. Horter attended a breakfast meeting at Hollywood Casino. They are already moving dirt. Their 106 was approved. This is part of the National Preservation Act - any federal undertaking must comply and take into account potential damage to historic resources. Burke is going to call the nearby fruit research station to make sure they're aware of the pollution that will be caused by the new insulation plant.

f. Status of Rte. 340 – MOU with WVDOH – Horter

The MOU was already approved. Because of 106 compliance for the extension of Route 340, the JCHLC will be given funds to pay for National Register research for the affected farms. Submission of the nominations will be based on the research and whether the JCHLC can secure the owners' approval.

g. Status of preservation easement for [REDACTED] farm – Horter

Horter has been going through the information. Burke would insist that any utilities are buried.

h. Status of interpretative projects – Kelly

The courthouse brochure has been printed. Kelly is working on an interpretive panel for the [REDACTED] cemetery by [REDACTED]

i. Status of NR nomination – *The Rocks* – Kelly

Kelly is continuing to work on this between projects.

j. Research on nominating the JC Courthouse as a NHL – Kelly

The NPS says there are no restrictions for NHL owners unless federal funds are being used. Burke will ask the county commission for permission to have the courthouse nominated. Kelly will write a briefing statement explaining the significance of the courthouse and its historic integrity, which will be sent to the NPS for review. NPS will send a representative to determine whether the building is eligible, then a nomination will need to be written. A large amount of research has already been done with [REDACTED] historic structures report.

VI. JANUARY 2018 JCHLC MEEING – CANCELED

AS (b) (6) Privacy, (b) (7)(C) Enforcement Privacy



EXHIBIT II - MOUNTAINEER GAS MAP SHOWING A.M.E. CHURCH PROPERTY AS (b) (6) Privacy, (b) (7)(C) Enforcement Privacy - CLOSEUP

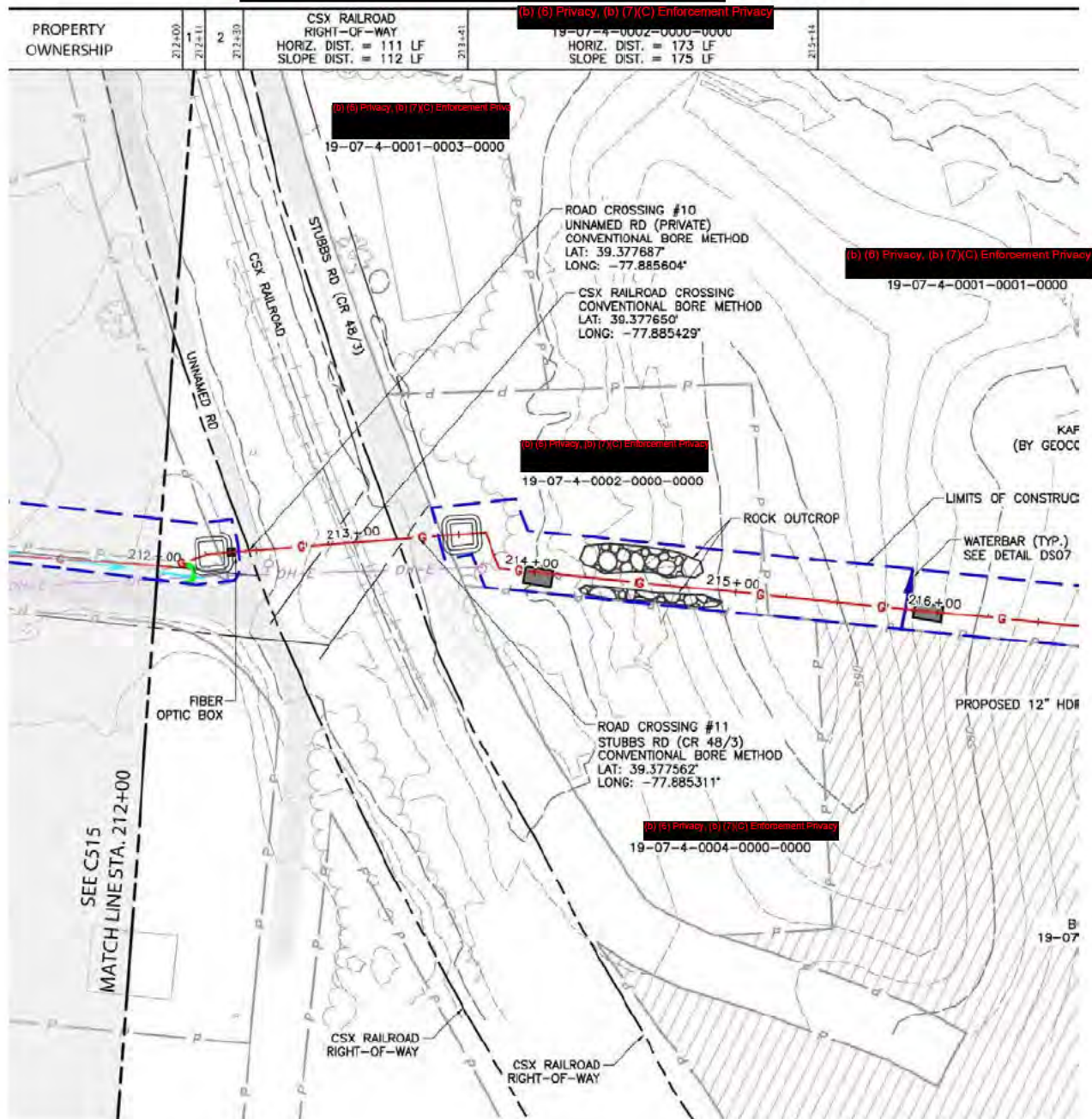


EXHIBIT JJ - (b) (6) Privacy, (b) (7)(C) Enforcement Privacy PROPERTY ACCORDING TO
JEFFERSON COUNTY TAX MAPS

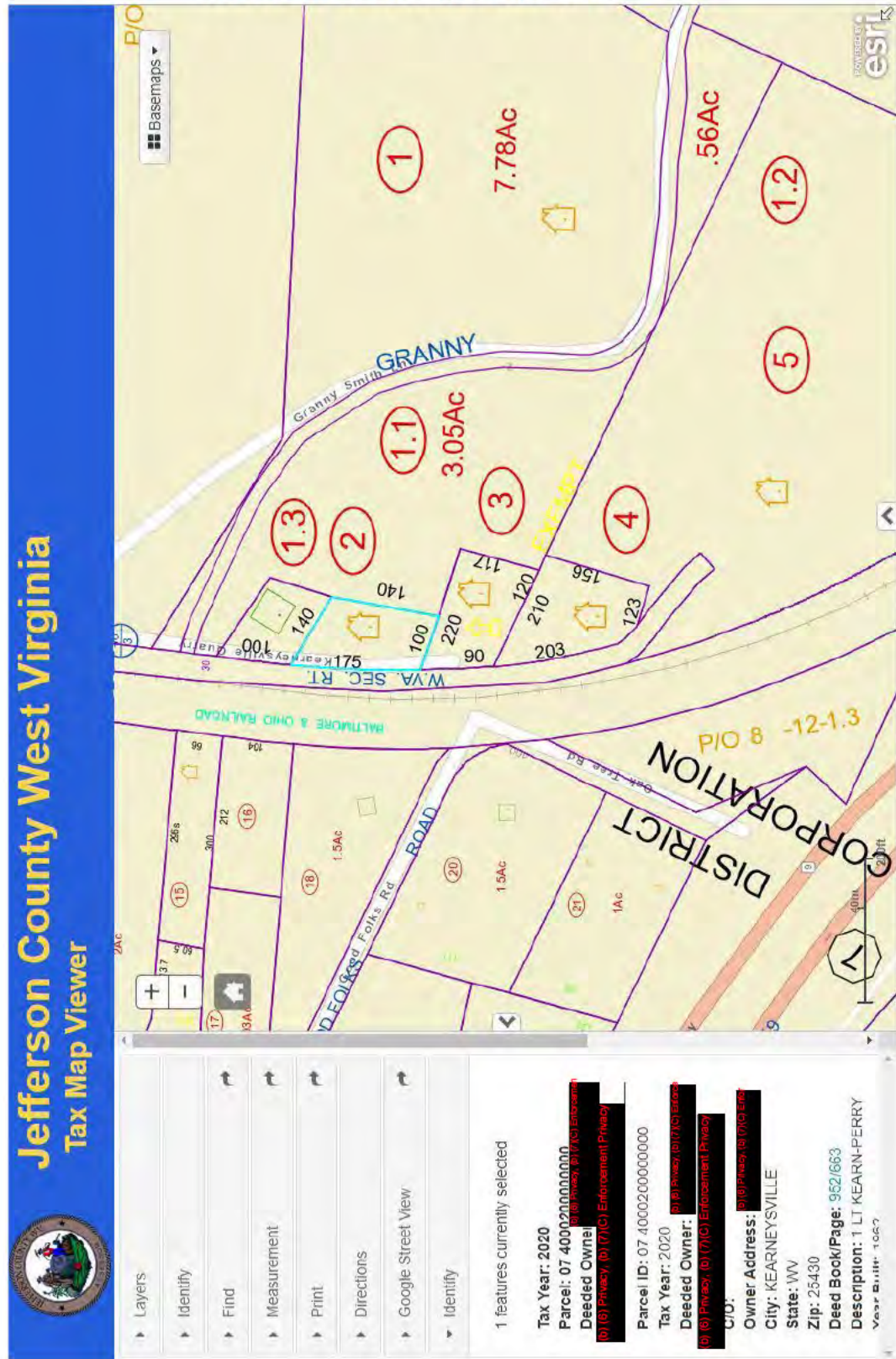


EXHIBIT KK - MOUNTAINEER GAS AND EASEMENT AGREEMENT FOR A.M.E. CHURCH PROPERTY, PAGE 1

6/7/2019

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22404
Jefferson County
Jacqueline C. Staller, Clerk
Instrument 201906033
06/19/2019 @ 01:46:32 PM
RIGHT OF WAY
Book 1221 + Page 278
Pages Recorded 7
Recorded Deed \$ 35.00
Transfer Tax \$ 158.00
Final Land Tax \$ 73.20

RIGHT OF WAY & EASEMENT

This Right-of-Way and Easement is entered into this 22 day of December, 2018, by (b) (6) Privacy, (b) (7)(C) Enforcement Privacy with an address of (b) (6) Privacy, (b) (7)(C) Enforcement Privacy, hereinafter, whether singular or plural, called the "Grantor," and Mountaineer Gas Company, a West Virginia company, with its principal place of business located in Charleston, Kanawha County, West Virginia, hereinafter called "Mountaineer".

WITNESSETH

WHEREAS, the Grantor is the owner of that certain property situated in Middleway District, Jefferson County, State of West Virginia, and identified as Tax Parcel Identification number 19-07-0004-0004-0000 and 19-07-0004-0001-0001, assessed as 1 LT Hartstown and 3 2/3 acres, more or less and as vested in the Grantor by that First and Final Settlement of (b) (6) Privacy, (b) (7)(C) Enforcement Privacy recorded on October 12, 2000, Book 135, Page 216, Final Settlement of (b) (6) Privacy, (b) (7)(C) Enforcement Privacy recorded January 13, 2015, Book 153, Page 619, Final Settlement of (b) (6) Privacy, (b) (7)(C) Enforcement Privacy recorded on 12-14-2018, Book 1221, Page 278, recorded May 26, 1946, Deed Book 172, at Page 467 and recorded June 21, 1963, Deed Book 260, Page 457 of record in the Office of the Clerk of the County Commission of said County (the "Property"); and

WHEREAS, in order to provide its services to and for West Virginia customers, Mountaineer has requested from Grantor this Right-of-Way and Easement for the purposes set forth herein, on and through the Property as set forth herein

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) for a right of way and easement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Mountaineer hereby agree as follows:

Return To: Lori Staller
Mountaineer Gas Company
P.O. Box 5201
Charleston, WV 25301-2201

EXHIBIT KK - MOUNTAINEER GAS AND EASEMENT AGREEMENT FOR A.M.E. CHURCH PROPERTY, PAGE 2

6/7/2019

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2 of 7																
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GRANT. Grantor hereby grants and conveys to Mountaineer, its successors and assigns, a permanent easement and the exclusive right to construct, lay, maintain, operate, replace, relocate, repair, change the size of, and abandon or remove, drips, valves, measuring and regulating equipment, and other appurtenant facilities necessary or convenient thereto, including, but not limited to, equipment, pigging conduits and telecommunication and/or cathodic protection, for the transportation of natural gas, and other associated fluids on, over, and across the Property

PERMANENT RIGHT-OF-WAY AREA. The right-of-way area shall be Twenty (20'), with Ten (10') generally on each side of the pipeline as more specifically shown on Exhibit "A" attached hereto and made a part hereof by this reference. The pipeline to be laid, together with reasonable, both on and off, right of way ingress, egress, and regress to and from same and the use of any existing roads on the premises for such access. The grant includes the right to clear, cut, trim, and/or remove any and all vegetation, trees, and brush and overhanging branches from the right-of-way by such means that Mountaineer in its sole discretion deems the most expeditious and convenient.

TEMPORARY CONSTRUCTION EASEMENT. In addition to the permanent right-of-way area as set forth above, Grantor conveys to Mountaineer a Thirty (30') temporary easement of an additional work space and adjoining the permanent pipeline right-of-way as shown on Exhibit A, for the purpose of enabling Mountaineer, its employees, agents and/or contractors to initially construct the pipeline and appurtenances or to later relocate the pipeline or lay additional pipeline and to conduct all activities incident thereto, including restoration or clean-up activities.

GRANTOR'S USE OF PROPERTY. Grantor shall have full use and enjoyment of the Property except for the purposes herein granted to Mountaineer. Grantor shall not change the depth of cover over the width of the right-of-way areas defined above, or of any installed pipeline without the written consent of Mountaineer, and shall not place or permit to be placed any temporary or permanent structure or obstruction of any kind, including but not limited to, buildings, mobile homes, trees, fences with posts or foundations, power poles or shrubs taller than five (5) feet at maturity or the like on or over the right-of-way area of any installed pipeline, and shall not store any materials of

Return To: Lori Sheffield
Mountaineer Gas Company
P.O. Box 5201
Charleston, WV 25301-0201

EXHIBIT KK -MOUNTAINEER GAS AND (b) (6) Privacy, (b) (7)(C) Enforcement Privacy EASEMENT
AGREEMENT FOR A.M.E. CHURCH PROPERTY, PAGE 3

6/7/2019

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any kind or operate or allow to be operated any heavy machinery or equipment over the right-of-way area without Mountaineer consent.

MOUNTAINEER'S OBLIGATIONS. It is distinctly understood and agreed that Mountaineer shall be responsible for any damages to persons or property that may result from Mountaineer's negligent or careless installation, use and/or removal of said facilities and/or equipment. Mountaineer shall replace and restore the area disturbed by the activities contemplated hereunder, to as near as practical to its original condition. Where reasonably practicable, all pipe, service connections and/or other appurtenances shall be buried so as not to interfere with the present use of the land.

PAYMENT OF DAMAGES; ARBITRATION. After initial construction, Mountaineer shall pay for or, at its sole discretion, repair damages to livestock, crops, and permitted fences in the event that such damages are caused by its operations. Said damages, if not mutually agreed upon by Grantor and Mountaineer, shall be ascertained and determined by three disinterested persons, one appointed by Grantor, one appointed by Mountaineer, and the third appointed by the two so appointed as aforesaid. Mountaineer shall pay for the cost of its appointee, Grantor shall pay for the cost of its appointee, and the parties shall share the cost of the third appointee. The award and decision of such three persons shall be final and conclusive.

DECLARATION OF CONSIDERATION. Under the penalties of fine and imprisonment as provided by W.Va. Code §11-22-1 and applicable law, Mountaineer declares that the total value of the interest in real property transferred by this agreement is Thirty Six Thousand Dollars \$36,000.00, and, therefore, said transfer ✓ is not subject to the State excise tax.

EXHIBIT KK - MOUNTAINEER GAS AND (b) (6) Privacy, (b) (7)(C) Enforcement Privacy EASEMENT AGREEMENT FOR A.M.E. CHURCH PROPERTY, PAGE 4

6/7/2019

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DEED BOOK				1221		Suffix		278		Suffix						

WITNESS the following signature(s) and, if applicable, seal(s):

SIGNATURE OF GRANTOR

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

STATE OF WEST VIRGINIA

COUNTY OF Jefferson to wit:

I, Karen K. Olden, a Notary Public in and for said County and State, do certify that (b) (6) Privacy, (b) (7)(C) Enforcement Privacy whose name is signed to the writing hereto annexed, bearing date on the 28th day of December 2018, has this day acknowledged the same before me in my presence.

Given under my hand this 28th day of December 2018.

My commission expires May 30, 2023

Notary Public



**EXHIBIT KK - MOUNTAINEER GAS AND (b) (6) Privacy, (b) (7)(C) Enforcement Privacy EASEMENT
AGREEMENT FOR A.M.E. CHURCH PROPERTY, PAGE 5**

6/7/2019

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DEED BOOK				1221		Suffix		278		Suffix						

SIGNATURE OF GRANTOR

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

STATE OF WEST VIRGINIA

COUNTY OF Berkeley to wit:

I, Katherine L. Watson, a Notary Public in and for said County and State, do certify that (b) (6) Privacy, (b) (7)(C) Enforcement Privacy, whose name is signed to the writing hereto annexed, bearing date on the 27 day of December, 2018, has this day acknowledged the same before me in my presence.

Given under my hand this 27 day of December, 2018.

My commission expires May 16, 2020

Katherine L. Watson
Notary Public



**EXHIBIT KK - MOUNTAINEER GAS AND (b) (6) Privacy, (b) (7)(C) Enforcement Privacy EASEMENT
AGREEMENT FOR A.M.E. CHURCH PROPERTY, PAGE 6**

6/7/2019

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DEED BOOK				1221		Suffix		278		Suffix					

SIGNATURE OF GRANTOR

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

STATE OF PA
COUNTY OF CLATSOP, to wit:

I, Susan Laura, Notary Public in and for said County and State, do certify that (b) (6) Privacy, (b) (7)(C) Enforcement Privacy, whose name is signed to the writing hereto annexed, bearing date on the 22 day of Dec 2018, has this day acknowledged the same before me in my presence.

Given under my hand this 22 day of 12, 2018.

My commission expires 4-19-19

Notary Public

Commonwealth of Pennsylvania - Notary Seal
Susan Laura, Notary Public
Clatsop County
My Commission Expires April 19, 2019
Commission Number 1188187

This document prepared by:
Mountaineer Gas Company

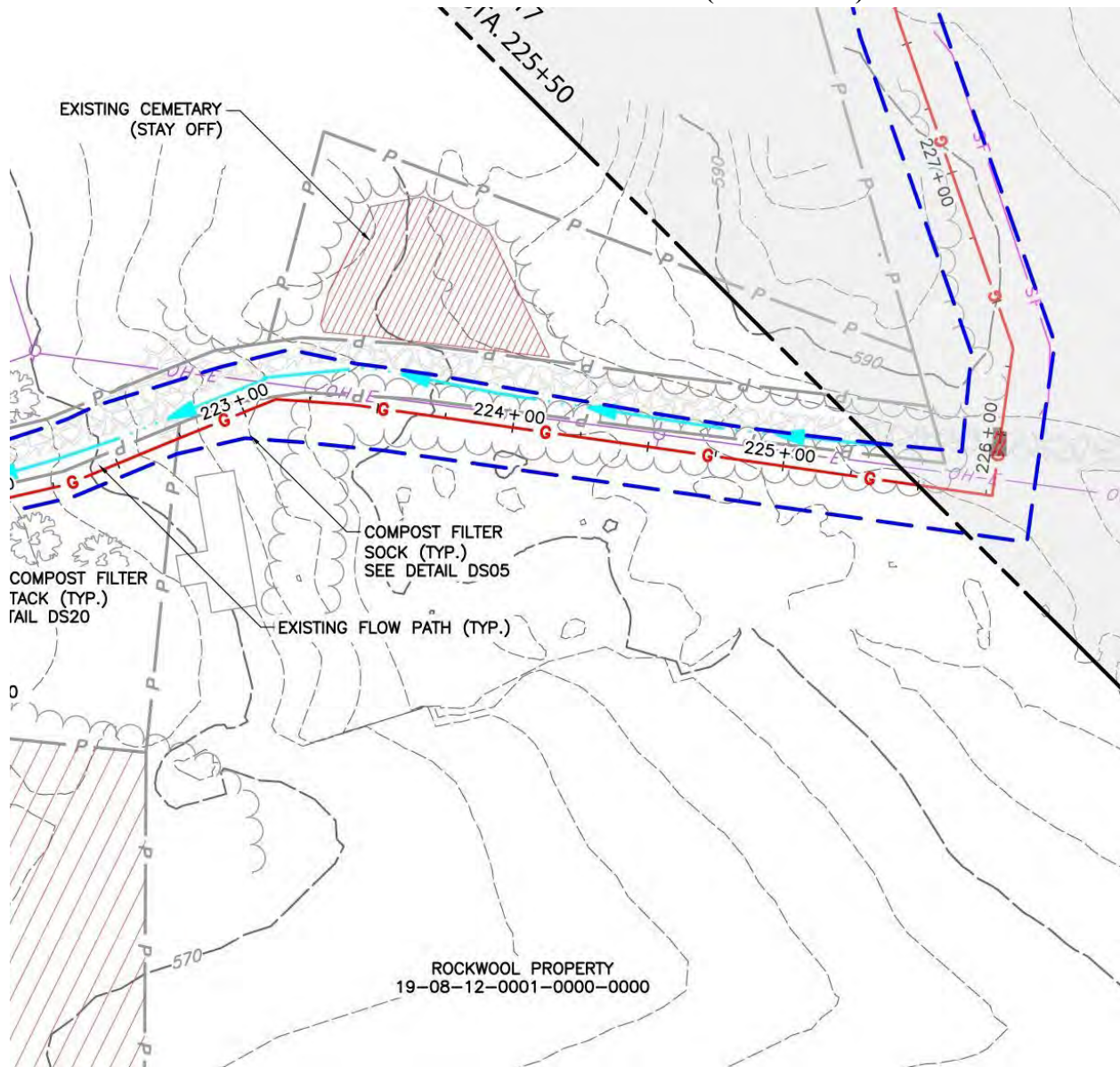
Submitted for recordation in the office of the Clerk of the Commission of Jefferson County, West Virginia by _____

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy


IDX Image Jefferson

(b) (5) Privacy, (b) (7)(C) Enb

**EXHIBIT LL - MOUNTAINEER GAS' MAPS SHOWING INCORRECT BOUNDARIES
AND SIZE FOR THE CEMETERY (CLOSE UP)**



**EXHIBIT MM - WV DEPARTMENT OF TRANSPORTATION, DIVISION OF
HIGHWAYS, GUIDANCE MEMO ON OIL AND GAS PIPELINE CROSSINGS
OCT. 1, 2018**



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
Division of Highways
1900 Kanawha Boulevard East • Building Five • Room 110
Charleston, West Virginia 25305-0430 • (304) 558-3505

Thomas J. Smith, P. E.
Secretary of Transportation/
Commissioner of Highways

October 1, 2018

MEMORANDUM

TO: ALL DISTRICT ENGINEERS/MANAGERS

FROM: THOMAS J. SMITH, P. E.
SECRETARY OF TRANSPORTATION/
COMMISSIONER OF HIGHWAYS 

SUBJECT: OIL AND GAS PIPELINE CROSSING REQUIREMENTS

This memo will provide additional guidance for preparation of permit requests to construct facilities for pipelines that carry natural gas, petroleum products or other similar materials produced and carried through pipelines, along with the requirements found in the latest edition of the *ACCOMMODATION OF UTILITIES ON HIGHWAY RIGHT OF WAY AND ADJUSTMENT AND RELOCATION OF UTILITY FACILITIES ON HIGHWAY PROJECTS MANUAL*. In any instance where discrepancies exist between this guidance and the manual, these guidelines shall prevail.

A. CONTROLLED/LIMITED ACCESS (CA) HIGHWAYS

1. GENERAL

CA highways include interstates, APD, (Appalachian Development Highway System routes) and any other sections of highway that use fence lines as a means to mark Division of Highways (DOH) Right of Way and to control or limit access. Longitudinal pipeline installations are not permitted within the DOH Right of Way. Coring requests, access to work areas from the travel lane or shoulder, parking, equipment loading or unloading, or material loading and unloading will not be permitted from any travel lane or shoulder of the roadway. No interference with the traveling public shall be permitted. If an unexpected circumstance creates the need for traffic control, then the proper case from the latest edition of

E.E.D./AFFIRMATIVE ACTION EMPLOYER

EXHIBIT MM - WV DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS, GUIDANCE MEMO ON OIL AND GAS PIPELINE CROSSINGS OCT. 1, 2018

MEMORANDUM – PIPELINE CROSSING REQUIREMENTS
October 1, 2018
PAGE 4

Coordination will be required with emergency services, county school systems, local law enforcement, and news media on closure times or expected delays due to construction or detours.

C. CASING

1. GENERAL

It is recognized that a definite policy on the encasement of pipelines must take into account many inconclusive variables, not the least of which is the progressive improvements being made in the pipeline industry for strengthening and protecting carrier pipes. An arbitrary policy of requiring casing for all highway crossings is too expensive for both the utility consumer and the highway user. As an alternative to casing, the Operator or the Operator's contractor may increase the minimum depth of cover in lieu of placing casing, if proper stress calculations are performed. However, if the Operator or Operator's contractor wishes to use this method, they must first obtain approval from the DOH for each location this method is to be used. Casing will only be required in certain locations that the District Engineer/Manager determines are required to maintain the safety of the traveling public.

2. CASED CROSSING DESIGN

For cased road crossings, the calculated wall thickness required for the maximum allowable operating pressure shall be determined using the following:

Liquid Pipeline - 0.72 Design Factor
Class 1 (Gas) - 0.72 Design Factor
Class 2 (Gas) - 0.60 Design Factor
Class 3 (Gas) - 0.50 Design Factor
Class 4 (Gas) - 0.40 Design Factor

The wall thickness shall meet or exceed the Title 49 CFR 192.193 and 195 current requirements for road crossings. DOH will require one class higher than the calculated required thickness for all major road crossings.

3. UNCASED CROSSING DESIGN

For uncased road crossings, the calculated wall thickness required for the maximum allowable operating pressure shall be determined using the following:

Liquid Pipeline - 0.50 Design Factor
Class 1, 2, 3 (Gas) - 0.50 Design Factor
Class 4 (Gas) - 0.40 Design Factor

MEMORANDUM – PIPELINE CROSSING REQUIREMENTS
October 1, 2018
PAGE 5

The wall thickness shall meet or exceed the Title 49 CFR 192, 193 and 195 current requirements for road crossings. DOH will require one class higher than the calculated required thickness for all major road crossings.

D. PERMIT APPLICATION SUBMITTAL

1. GENERAL

An individual crossing permit shall be required for each location at which the pipeline crosses the State Highway Right of Way. The permit for the crossing may include accesses from the State Highway Right of Way on each side of the road within the crossing's limits, only within non-CA right of way areas.

2. PERMIT APPLICATION FORMS

The Oil & Gas Information Data Sheet will contain all information needed for DOH personnel to initiate a new permit in the database. It must include contact personnel for permit questions and for personnel in charge of field construction. All necessary hauling route information will also be included on the Data Sheet.

3. SITE PHOTOS

Photos in the four directions of each entrance/crossing should be included with the submittal. These need to be captioned and have a recognizable land mark shown or referenced in the photo. The proposed site needs to be staked before submitting the permit application.

4. MAP

A site-specific map showing the location of the proposed project should include the hauling routes used. The DOH prefers a portion of the latest County Maps be used for this. When the pipeline crossing is a part of a larger pipeline project with multiple crossing and accesses, it is recommended to provide an overview map showing the centerline of the entire project on the County Maps. This is helpful for the District personnel to plan site and route reviews more efficiently in order to minimize the time needed to approve the permit.

5. PROPOSED PLANS

Plan, profile and cross-sectional views of proposed plans are to be included with each application showing depth of cover and original ground slopes for both sides of the roadway extending at least to the Right of way limits. No access or break of controlled access will be permitted from within the roadway right of way.

MEMORANDUM – PIPELINE CROSSING REQUIREMENTS
October 1, 2018
PAGE 6

When the cut or fill slope is steeper than 2:1, a slope stabilization plan shall be included in the plan submittal.

6. PIPE CALCULATIONS

High pressure pipelines with an operating pressure over 150 psi will be considered individually to determine if they will present a danger to the traveling public. The pipe thickness under the roadway shall be increased 1 class above the calculated required thickness. The pipe wall thickness under the roadway shall be as calculated in C.2 or C.3 above. The application for permits for these lines shall include the operating pressure, the maximum allowable operating pressure and safety calculations signed by a WV licensed Professional Engineer which shall comply with the Title 49 Code of Federal Regulations Part 192.

7. METHOD OF REPAIR

The submitted application shall include a general plan for repair or replacement of this pipeline crossing structure, in case of a leak or defect.

8. TRAFFIC CONTROL PLAN

If traffic control is required, then the proper case from the latest edition of the *MANUAL ON TEMPORARY TRAFFIC CONTROL FOR STREETS AND HIGHWAYS* shall be used, and included with the original application. If an open cut is approved by the District Engineer/Manager, a traffic control plan specifically for an open cut will be included. As a general rule, the DOH would prefer not to detour traffic at a pipe crossing, unless absolutely necessary. Any detour routes used by the Operator will be maintained by the Operator.

E. INSPECTION

The DOH will make every effort to provide proper inspection of the pipeline crossing work with in-house workforce. The Contractor will provide the DOH with as-built notes, plans, or other documentation that verifies the pipeline was constructed at the proper location and grade, unless directed otherwise.

MEMORANDUM – PIPELINE CROSSING REQUIREMENTS
October 1, 2018
PAGE 7

TJS:Mb

cc: SEC, CC, CA, CL, CW, CB, CM, AC, AL, CH, HO, HD, OM

EXHIBIT NN - LONGITUDINAL INSTALLATION OF MOUNTAINEER GAS PIPELINE IN THE DOH ROW ALONG COAST GUARD DRIVE

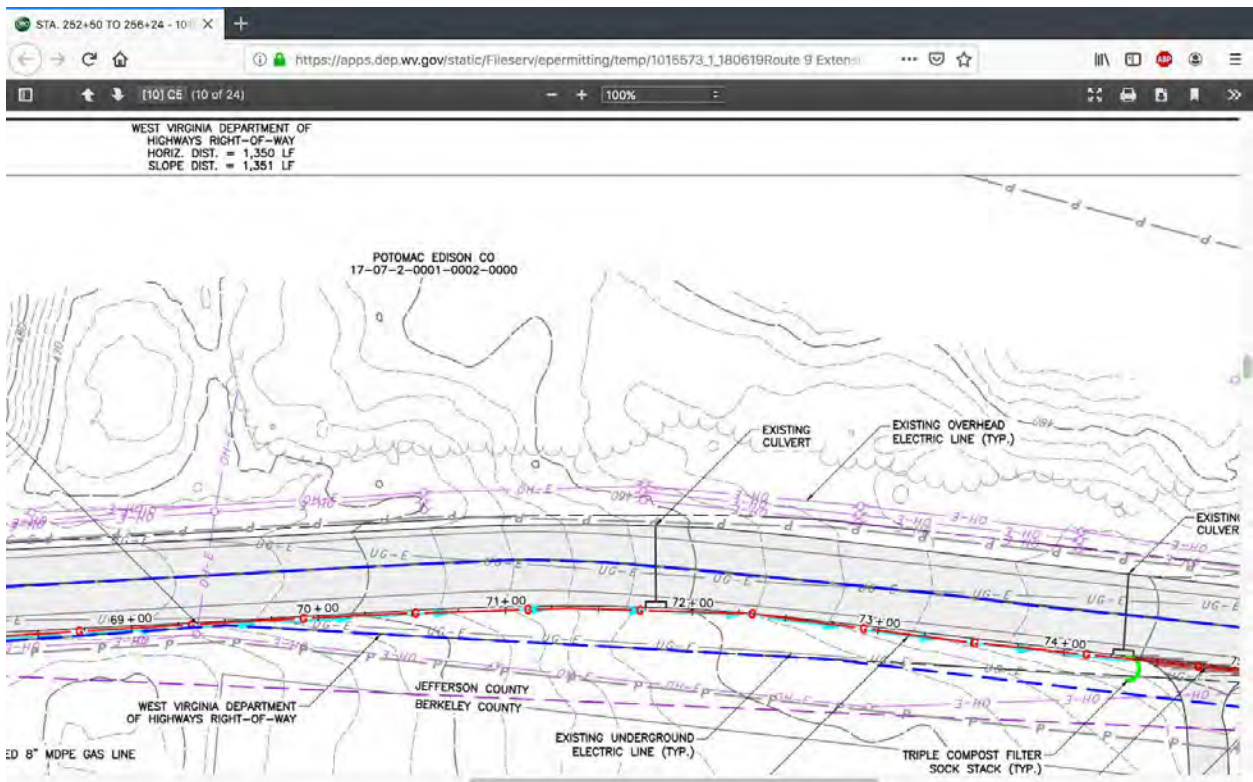
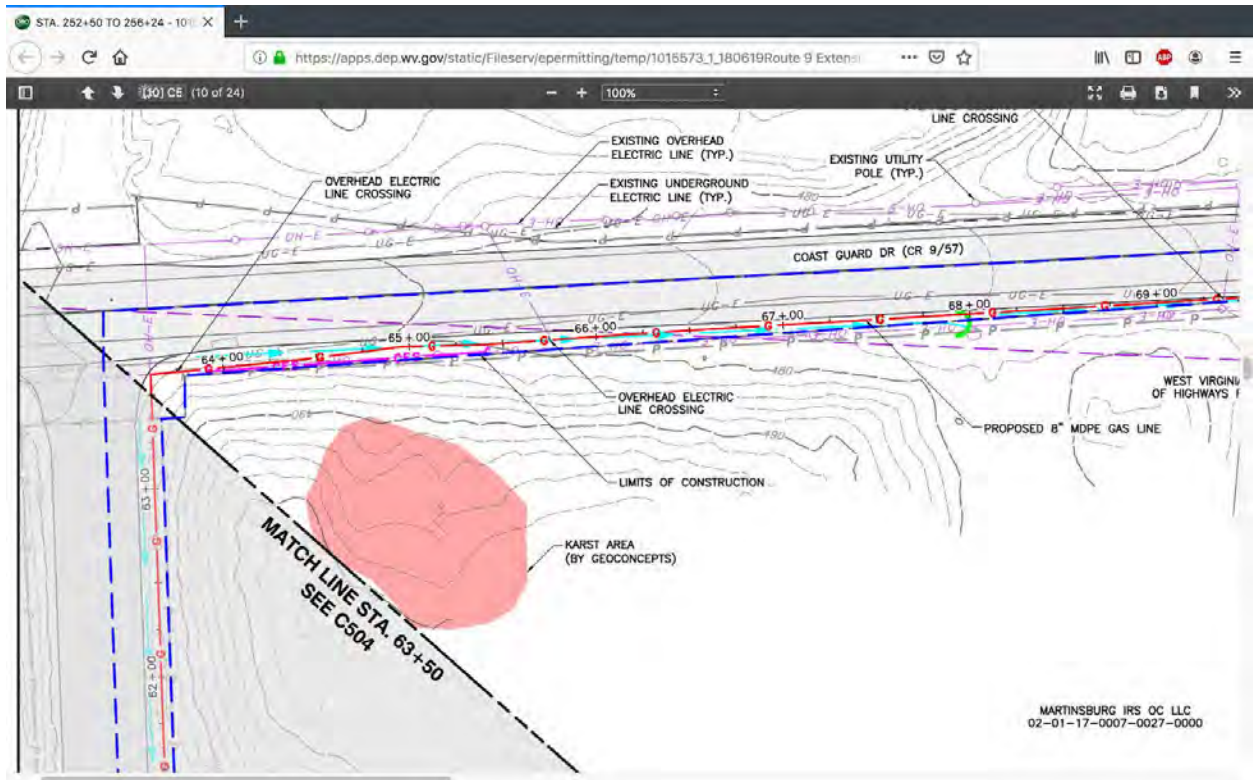


EXHIBIT NN - LONGITUDINAL INSTALLATION OF MOUNTAINEER GAS PIPELINE IN THE DOH ROW ALONG COAST GUARD DRIVE

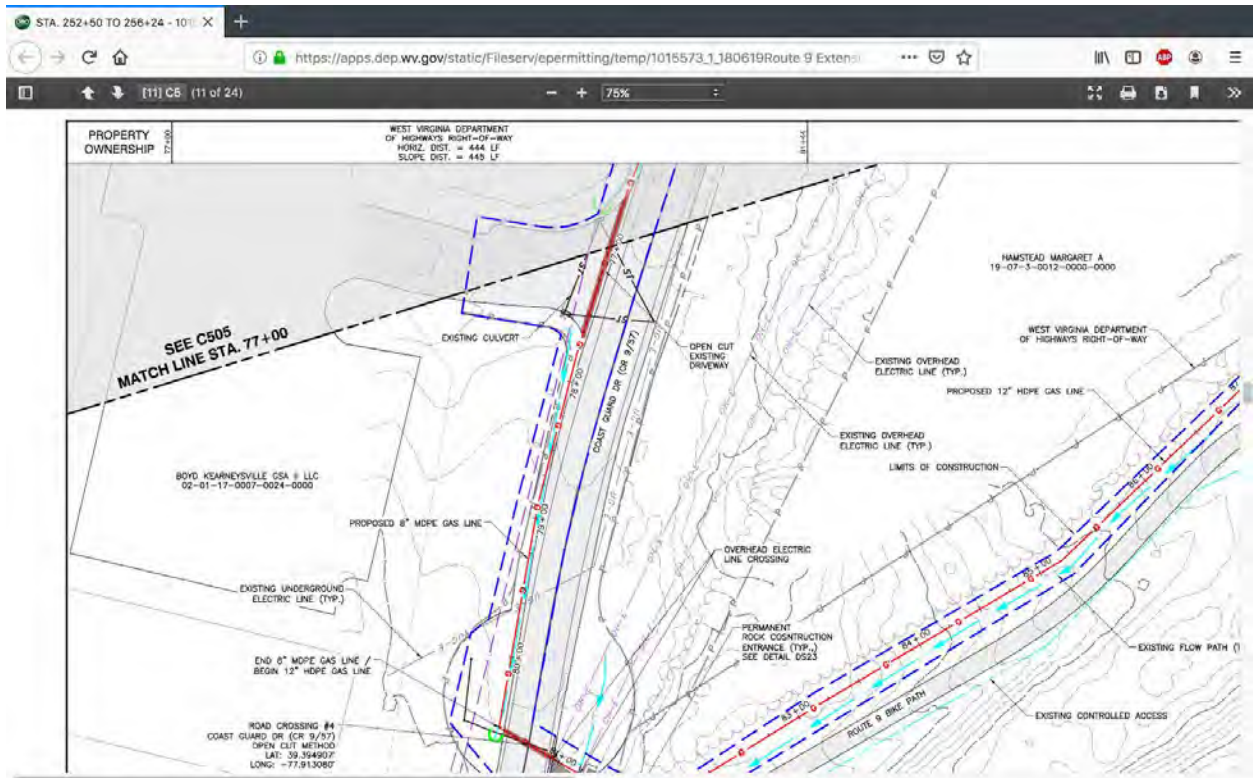


EXHIBIT 00 - LONGITUDINAL INSTALLATION OF MOUNTAINEER GAS PIPELINE IN THE DOH ROW ALONG GOOD FOLKS ROAD

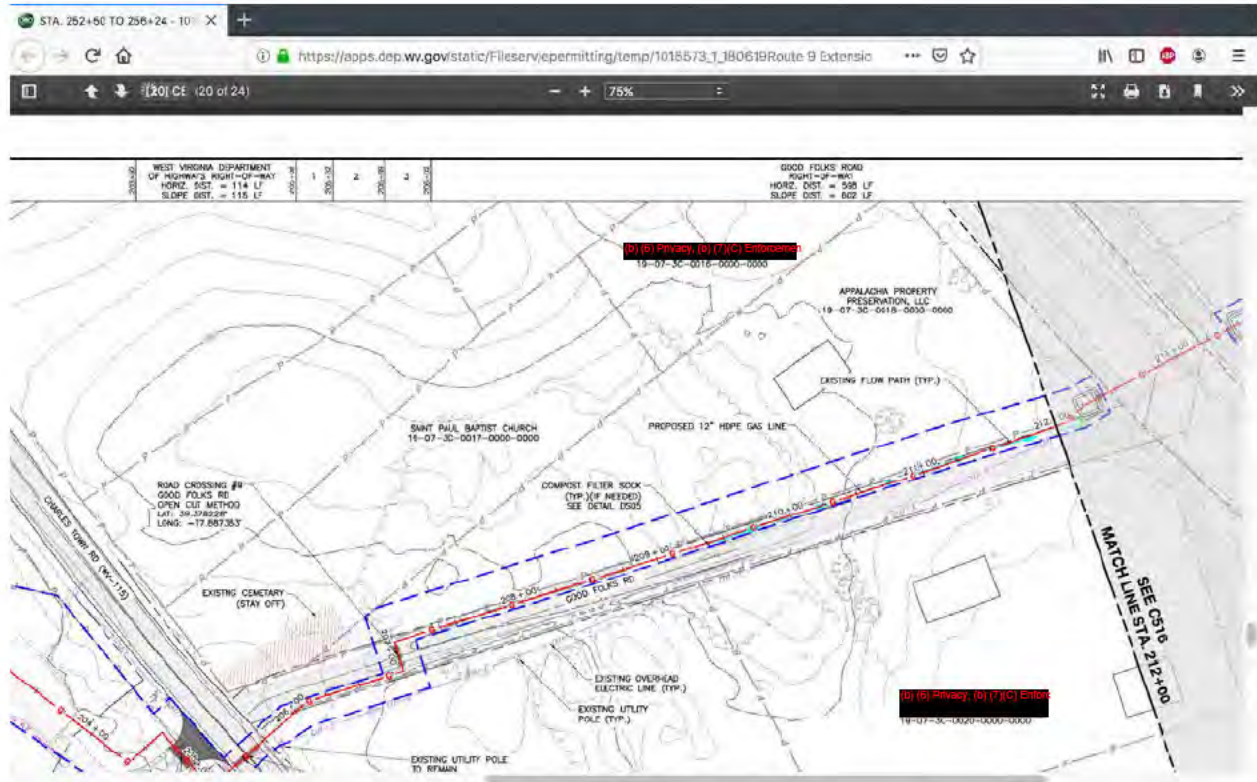


EXHIBIT PP - PUBLIC NOTICE NO. SM-4-2019

State of West Virginia
Department of Environmental Protection
Division of Water and Waste Management
PUBLIC NOTICE and PUBLIC HEARING

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION'S, PUBLIC INFORMATION OFFICE, 601 57TH STREET SE, CHARLESTON, WEST VIRGINIA 25304-2345 TELEPHONE: (304) 926-0440.

APPLICATION FOR COVERAGE UNDER THE GENERAL WEST VIRGINIA WATER POLLUTION CONTROL PERMIT NO. WV0116815

Public Notice No.: SM-4-2019 Public Notice Date: January 25, 2019

Paper: The Journal

The following has applied for coverage under the General WV/Water Pollution Control Permit No. WV0116815 for this facility or activity:

Appl. No.: WVR311281

Applicant: MOUNTAINEER GAS COMPANY
414 SUMMERS ST
CHARLESTON, WV 25301

Location: Near KEARNEYSVILLE, BERKELEY COUNTY

Latitude: 39° 23' 40.1172" Longitude: 77° 53' 59.6034"

Receiving Stream:
Shaw Run/Evans Run/Opaquon Creek/Potomac River

Activity:
The proposed Route 9 Extension Pipeline Project (Project) will disturb 32.64 acres and consists of the installation of approximately 4.93 miles natural gas distribution pipeline in Berkeley and Jefferson Counties, West Virginia, and involves construction of approximately 4.93 miles of natural gas distribution line. The project includes access roads, 17.69 acres entirely within the Department of Highways Right-of-way and 14.95 acres of private Right-of-way (ROW).

Business conducted:
Route 9 Extension

Implementation:
N/A

On the basis of review of the application the "Water Pollution Control Act (Chapter 22, Article 11-6(a)), and the "West Virginia Legislative Rules," the State of West Virginia will act on the above application.

Any interested person may submit written comments on the site registration permit application by addressing such to the Director of the Division of Water and Waste Management within 30 days of the date of the public notice. Such comments or requests should be addressed to:

Director, Division of Water and Management, DEP
ATTN: Sharon Mullins, Permitting Section
601 57th Street SE
Charleston, WV 25304-2345

P189

The public comment period begins January 25, 2019 and ends February 25, 2019. A public hearing has been scheduled from 6 to 8 p.m. on Thursday, February 21, 2019 at:

Ranson Civic Center
431 W. 2nd Ave.
Ranson, WV 25418

The purpose of the hearing is to take comments on the draft permit that will cover the discharge of stormwater during construction activities.

Oral and written comments will be accepted at the hearing. After the public hearing, the comment period will continue until 8 p.m. on Friday, February 25, 2019.

A copy of the draft permit can be obtained by calling Sharon Mullins, Division of Water & Waste Management, (304) 926-0499, ext. 1132; or e-mail her at Sharon.A.Mullins@WV.Gov.

Comments received within this period will be considered prior to acting on the permit application. Correspondence should include the name, address and the telephone number of the writer and a concise statement of the nature of the issues raised. The Director shall hold a public hearing whenever a finding is made, on the basis of requests, that there is a significant degree of public interest on issues relevant to the site registration permit application and this facility's coverage under the General Permit. Interested persons may contact the Public Information Office to obtain further information.

The application may be inspected, by appointment, at the Division of Water and Waste Management Public Information Office, at 601 57th Street SE, Charleston, WV, between 8:00 a.m. and 4:00 p.m. on business days. Copies of the application and the General Permit and Fact Sheet may be obtained from the Division at a nominal cost. Individuals requiring Telecommunication Device (TDD) may contact our agency by calling (304) 926-0493. Calls must be made 8:30 a.m. to 3:30 p.m. Monday through Friday.

P190

EXHIBIT QQ - PUBLIC NOTICE AS IT APPEARED IN THE MARTINSBURG JOURNAL LEGAL ADS, JAN. 25, 2019

State of West Virginia
Department of
Environmental
Protection Division of
Water and Waste
Management

**PUBLIC NOTICE and
PUBLIC HEARING**

WEST VIRGINIA
DEPARTMENT OF
ENVIRONMENTAL
PROTECTION'S
PUBLIC INFORMATION
OFFICE, 601 57TH
STREET SE,
CHARLESTON,
WEST VIRGINIA
25304-2345
TELEPHONE:
(304) 926-0440.

APPLICATION FOR
COVERAGE UNDER
THE GENERAL
WEST VIRGINIA WATER
POLLUTION CONTROL
PERMIT NO. WV0116815

Public Notice No.:
SM-4-2019

Public Notice Date:
January 25, 2019

110 Legal/ Public Notices

Paper: This Journal

The following has applied for coverage under the General WV/Water Pollution Control Permit No. WV0116815 for this facility or activity.

Appl. No.: WVR511281

Applicant:
MOUNTAINEER GAS COMPANY
414 SUMMERS ST
CHARLESTON, WV 25301

Location: Near KEARNEYSVILLE, BERKELEY COUNTY

Latitude: 39° 23' 40.1172"
Longitude: 77° 53' 59.6034"

Receiving Stream: Shaw Run/Evans Run/Opequon Creek/Potomac River

Activity:
The proposed Route 9 Extension Pipeline Project (Project) will disturb 32.64 acres and consists of the installation of approximately 4.93 miles natural gas distribution pipeline in Berkeley and Jefferson Counties, West Virginia, and involves construction of approximately 4.93 miles of natural gas distribution line.

The project includes access roads, 17.69 acres entirely within the Department of Highways Right-of-way and 14.95 acres of private Right-of-way (ROW).

Business conducted: Route 9 Extension

Implementation: N/A

On the basis of review of the application the Water Pollution Control Act (Chapter 22, Article 1-6(a)), and the West Virginia Legislative Rules, the State of West Virginia will act on the above application.

The public comment period begins January 25, 2019 and ends February 25, 2019. A public hearing has been scheduled from 6 to 8 p.m. on Thursday, February 21, 2019 at:

Ranson Civic Center
431 W. 2nd Ave.
Ranson, WV 25438

The purpose of the hearing is to take comments on the draft permit that will cover the discharge of stormwater during construction activities.

Oral and written comments will be accepted at the hearing. After the public hearing, the comment period will continue until 8 p.m. on Friday, February 25, 2019.

A copy of the draft permit can be obtained by calling Sharon Mullins, Division of Water & Waste Management, (304) 926-0469, ext. 1152; or email her at Sharon.Mullins@WV.gov.

Comments received within this period will be considered prior to acting on the permit application. Correspondence should include the name, address and the telephone number of the writer and a concise statement of the nature of the issues raised. The Director shall hold a public hearing whenever a finding is made, on the basis of requests, that there is a significant degree of public interest on issues relevant to the site registration permit application and this facility's coverage under the General Permit. Interested persons may contact the Public Information Office to obtain further information.

The application may be inspected, by appointment, at the Division of Water and Waste Management Public Information Office, at 601 57th Street SE, Charleston, WV, between 9:00 a.m. and 4:00 p.m. on business days.

Copies of the application and the General Permit and Fact Sheet may be obtained from the Division at a nominal cost. Individuals requiring Telecommunication Device (TDD) may contact our agency by calling (304) 926-0493. Calls must be made 8:30 a.m. to 5:30 p.m. Monday through Friday.

EXHIBIT RR -WVDEP ELECTRONIC SUBMISSION SYSTEM APPLICATION UPLOAD LOGS FOR THE MOUNTAINEER PERMIT³⁸

Applicant:

MOUNTAINEER GAS COMPANY

Facility:

Route 9 Extension (10/31/2018)

Type:

New NPDES/State Storm Water Construction #1

Permit:

WVR311281


Application Attachments

Close

Section	Description	File name	Uploaded Date	Version	User	CRP
Sections 9 - 11: Description of Project, Estimates, and Cubic Yards	Project Reduction Narrative	Route-9-Change narrative.pdf	13/29/2019 10:07 AM	0	RizoE50	
Sections 9 - 11: Description of Project, Estimates, and Cubic Yards	LOD, Centerline, and Station CADD file	Route 9 Extension Project-WGS #4.zip	13/29/2019 10:04 AM	0	RizoE50	
Sections 9 - 11: Description of Project, Estimates, and Cubic Yards	LOD, Centerline, and Station File	Route 9 Extension Project.zip	13/29/2019 10:03 AM	0	RizoE50	
Information: Supplemental Information	Chesapeake Addendum	Chesapeake Addendum.pdf	12/15/2019 04:45 PM	1	RizoE50	
Sections 15 - 17: Site Maps and Storm Water Management	SWPPP	180619_SWPPP.pdf	12/15/2019 04:30 PM	1	RizoE50	
Sections 15 - 17: Site Maps and Storm Water Management	Appendix B	Appendix_B_20190219_120619166B_38_Soil_Report.pdf	12/15/2019 04:29 PM	1	RizoE50	
Sections 15 - 17: Site Maps and Storm Water Management	Erosion/Sediment	180619 Route 9 Extension NPDES Plan Set.pdf	12/15/2019 04:05 PM	1	RizoE50	
Sections 15 - 17: Site Maps and Storm Water Management	Management	MOORESB DETAIL 6.pdf	12/15/2019 04:04 PM	1	RizoE50	
Sections 15 - 17: Site Maps and Storm Water Management	Appendix D	180619 GPP Appendix D.pdf	12/15/2019 04:03 PM	1	RizoE50	
Sections 15 - 14: Relative Time Line, Sediment Controls, and Sequence	Details	MGC FNS DETAIL 6.pdf	12/15/2019 04:01 PM	1	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	Controls	Attachment 13.pdf	12/15/2019 04:01 PM	1	RizoE50	
Sections 5 - 8: Site Information	TOPO Map	Appendix A 180619 0001 FIG1 USGS SITE.pdf	12/15/2019 03:56 PM	1	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	Sinkhole repair plan	Sinkhole Repair Procedure.pdf	11/17/2019 10:53 AM	0	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	SHEET 13 OF 33	180619 Route 9 SHEET 13_20190117.pdf	11/17/2019 10:49 AM	0	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	Section 2.1	Section 2.1-2.2.pdf	11/17/2019 10:34 AM	0	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	SWPPP Section 4.4	section 4.4.pdf	11/17/2019 10:34 AM	0	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	Section 4.1	Section 4.1.pdf	11/17/2019 10:33 AM	0	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	SWPPP Section 2.2	Section 2.1-2.2.pdf	11/17/2019 10:32 AM	0	RizoE50	
Form: Statement For Billing, Class 1	Statement For Billing	201901151819548798.pdf	11/16/2019 04:57 PM	0	RizoE50	
Sections 15 - 17: Site Maps and Storm Water Management	Appendix F	180619_route 9 ext Installation Exhibit.pdf	12/07/2018 05:33 PM	0	RizoE50	
Sections 15 - 17: Site Maps and Storm Water Management	Appendix E	Mountaineer Gas RIEExt Survey.pdf	12/07/2018 05:25 PM	0	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	Sequence	Attachment 14.pdf	12/07/2018 03:00 PM	0	RizoE50	
Certification: Signature Page	Certification Signature Page	DEP_Cert_sign.pdf	12/07/2018 02:00 PM	0	RizoE50	
Section 18: Public Notice Sign	Public Notice Sign	180619 - Public Notice Sign-Figure No.1.pdf	12/07/2018 11:05 AM	0	RizoE50	

³⁸ RizoE50 is an employee of Civil & Environmental Consultants, Inc., the consulting firm used by Mountaineer Gas Company to prepare the Oil & Gas Construction Stormwater Permit Application. He is Mountaineer's designated user of the ESS system for this permitting action.

EXHIBIT SS - WVDEP LETTER GRANTING MOUNTAINEER REGISTRATION UNDER THE GENERAL PERMIT, MARCH 29, 2019

wvdep.org		wvdep.org	
			
West Virginia Department of Environmental Protection			
Division of Water and River Management 601 576 West SE Charleston West Virginia 25304-2345 Phone: (304) 256-0495 Fax: (304) 256-0463		North Carolina, Cabinet Secretary Riparian	
March 29, 2019			
MOUNTAINEER GAS COMPANY Heed Robinson 134 SUMMIT ST Martinsburg, WV 25803		Re: General Permit Registration No. WVDEP (132) Berkeley Co. Route 9 Extension (1001/2018) Area Permitted to be Disturbed (25.38)	
Dear Permittee:			
You are now authorized to operate under General Permit No. WVDEP (132) to discharge stormwater associated with Oil and Gas related construction activities. This registration form should be kept with your copy of the General Permit. You should carefully read the contents of the permit and become familiar with all requirements needed to remain in compliance.			
Although you should be aware of all the terms and conditions of this permit, we wish to advise you of the following important requirements:			
1. In accordance with Section G.4 of the General Permit, you have developed a complete storm water pollution prevention plan. This plan is to be retained on site and be available for review by the Director or the Director's authorized representative as of the date of your coverage by the General Permit, which is the date of this letter.			
2. The erosion control measures approved by this Agency for this project shall be maintained in proper condition to individually and collectively perform the functions for which they were designed. In order to ensure the efficiency and proper maintenance of these measures, the permittee shall make sufficiently frequent, periodic inspections to detect any impairment of the designed utility, capacity or environmental requirements of the approved measures. The permittee shall take immediate steps to correct any such impairment found to exist.			
3. If this Stormwater Pollution Prevention Plan (SWPPP) proves to be ineffective in controlling erosion and the sediment in storm water discharges associated with industrial/construction activities, or site conditions change, the Permittee shall amend the SWPPP and install appropriate sediment and/or control devices in accordance with Section G.4.c. of this permit and the application instructions.			
Promoting a healthy environment.			
Harold D. Ward Acting Director WV DEP-Division of Water & Waste Mgt. 601 576 St SE Charleston, WV 25304-2345 Phone: (304) 256-0495 Fax: (304) 256-0463			

4. The current General Permit expires on March 31, 2024. If you wish to continue an activity authorized by this permit after the expiration date of the permit, provisions for coverage will be made during the public notice process for any new General Permit to be issued at that time.

5. Final stabilization means disturbed areas shall be covered by the appropriate permanent protection. Final stabilization includes: pavement; buildings; stable waterways (ditch, concrete, grass or pipe); a healthy, vigorous stand of perennial grass that uniformly covers at least 70 percent of the ground; stable outer channels with velocity dissipation which directs site runoff to a natural watercourse; and any other approved structure or material.

You will be invoiced for your annual permit fees one month prior to the anniversary date of today's date. Failure to submit the annual fee within 90 days of the due date will render your permit void upon the date you are mailed a certified written notice to that effect. Please be advised that a pro-rated annual permit fee may be assessed upon the completion date and proper stabilization.

Issuance of this registration does not authorize any injury to persons or property or invasion of other private rights, or any infringement of federal, state or local law or rules.

The validity of this General Permit Registration is contingent upon payment of the applicable annual permit fee, as required by Chapter 22, Article 11, Section 10 of the Code of West Virginia.

Issuance of this registration does not authorize any injury to persons or property or invasion of other private rights, or any infringement of federal, state or local law or rules.

Your efforts toward preventing the degradation of our natural resources are greatly appreciated. If you have any questions, please contact Rick Adams at (304) 256-0495 Ext. 1354 or by email at rick.adams@wv.gov.

EXHIBIT TT - CONSTRUCTION FENCE INSTALLATION



EXHIBIT UU - TREE REMOVED FROM THE CEMETERY



**EXHIBIT VV - ACCESS TO CEMETERY BLOCKED BY MOUNTAINEER GAS
PIPELINE CONSTRUCTION**



**EXHIBIT VV - ACCESS TO CEMETERY BLOCKED BY MOUNTAINEER GAS
PIPELINE CONSTRUCTION**



**EXHIBIT VV - ACCESS TO CEMETERY BLOCKED BY MOUNTAINEER GAS
PIPELINE CONSTRUCTION**



EXHIBIT WW - MOUNTAINEER GAS SITE MAP LEGEND

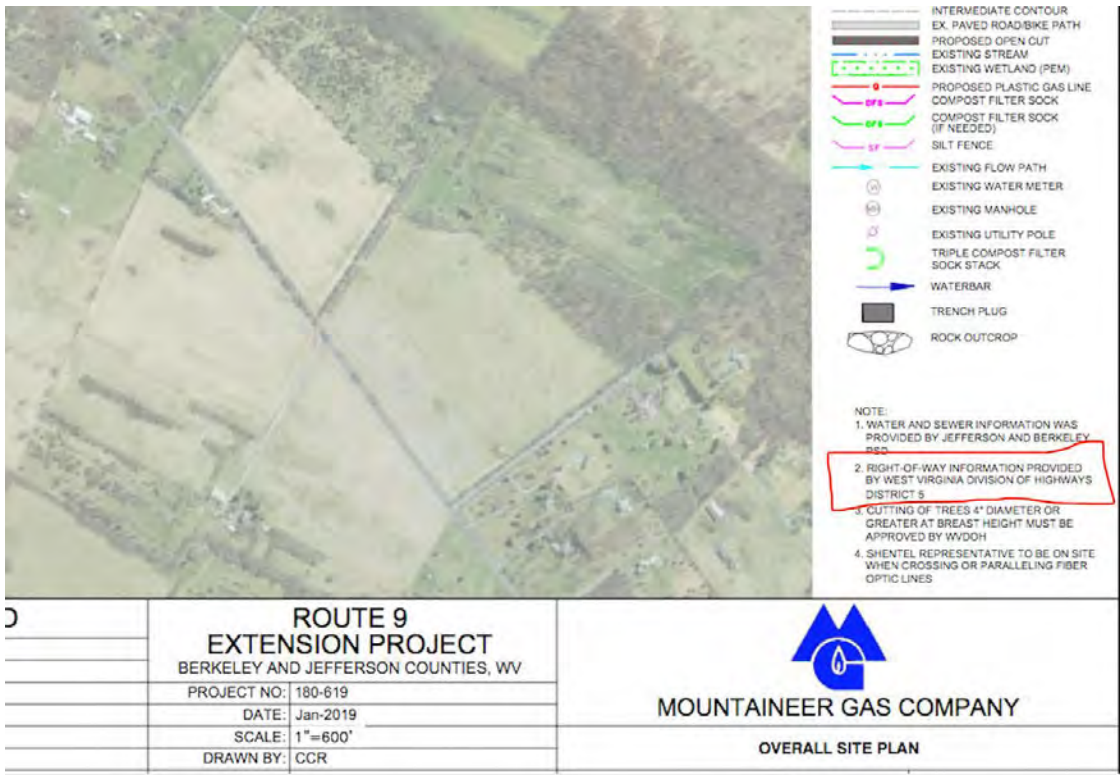


EXHIBIT XX - CONSTRUCTION METHOD FOR EDGE OF ROAD (LONGITUDINAL) PIPELINE INSTALLATIONS

[THIS FIGURE WAS PULLED FROM THE 1/18/2019 WVDEP APPLICATION ON
2/14/2019 AND THE SECOND FIGURE SUBSTITUTED, REMOVING ANY HINT OF
CARS OR TELEPHONE POLES...]

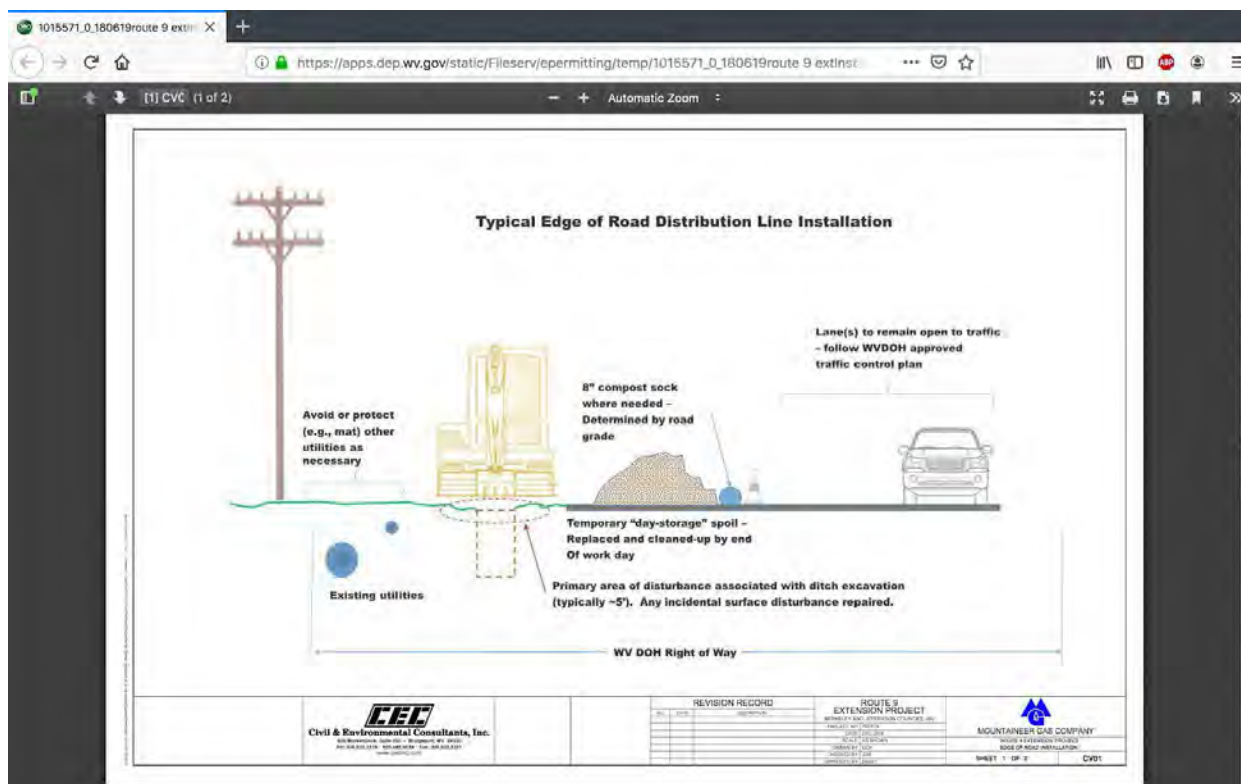
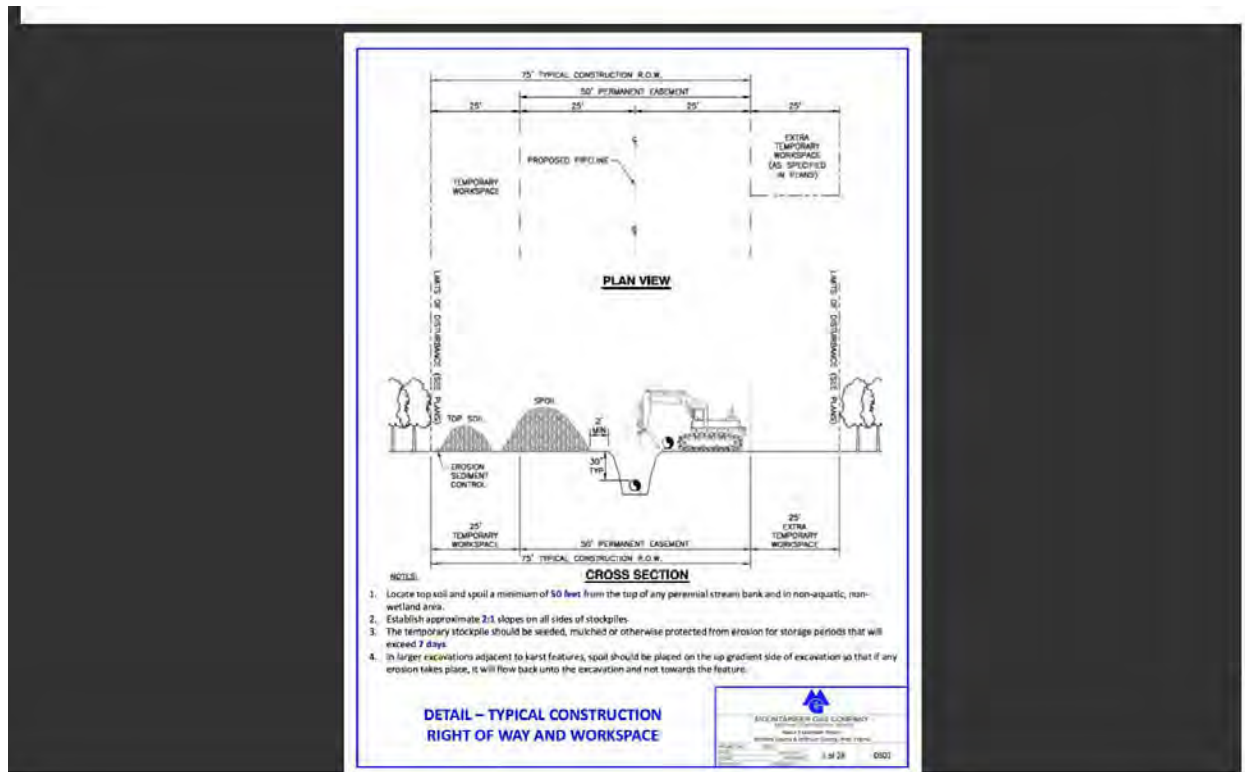
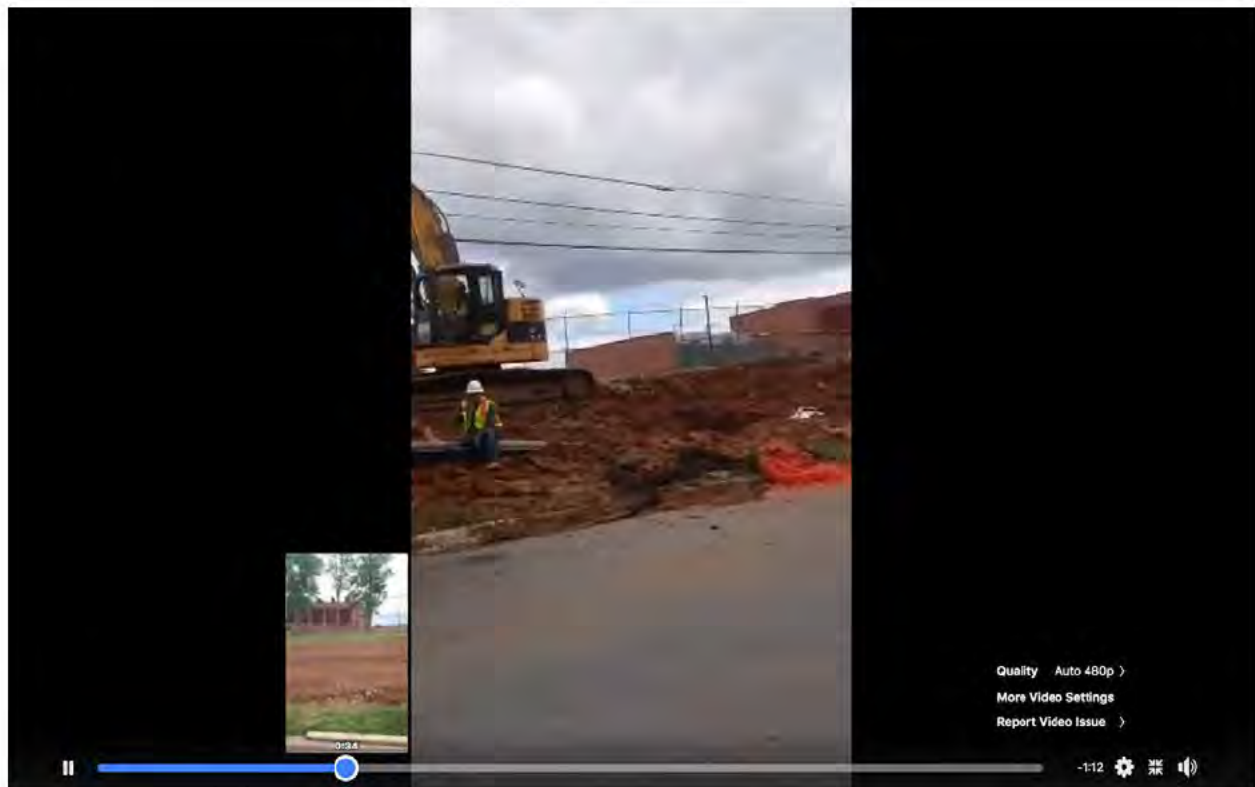


EXHIBIT XX - CONSTRUCTION METHOD FOR EDGE OF ROAD (LONGITUDINAL) PIPELINE INSTALLATIONS

[THIS FIGURE WAS PULLED FROM THE 1/18/2019 WVDEP APPLICATION ON
2/14/2019 AND THE SECOND FIGURE SUBSTITUTED, REMOVING ANY HINT OF
CARS OR TELEPHONE POLES...]



**EXHIBIT YY - MOUNTAINEER GAS PIPELINE BEING INSTALLED³⁹ IN DOH
RIGHT OF WAY (ROAD EDGE--LONGITUDINAL METHOD)
ALONG COAST GUARD DRIVE
MAY 14, 2019**



³⁹ Courtesy of Eastern Panhandle Protectors; full video:
https://www.facebook.com/easternpanhandleprotectors/videos/433060534174174/?epa=SEARCH_BOX

EXHIBIT ZZ - MOUNTAINEER BLOCKING ACCESS TO ROUTE 9 BIKE PATH⁴⁰
MAY 20, 2019



⁴⁰ Notice the lack of a WVDEP-required Construction Stormwater Permit Public Notice Sign.

**EXHIBIT AAA - MOUNTAINEER TRENCHING EQUIPMENT AND PIPE LAYDOWN
MAY 20, 2019**

NOTE: THE EQUIPMENT IS NOT ONLY ON THE BIKE PATH, BUT AT THIS POINT THE BIKE PATH ITSELF CROSSES INTO THE ROW OF THE LIMITED ACCESS HIGHWAY (ROUTE 9)

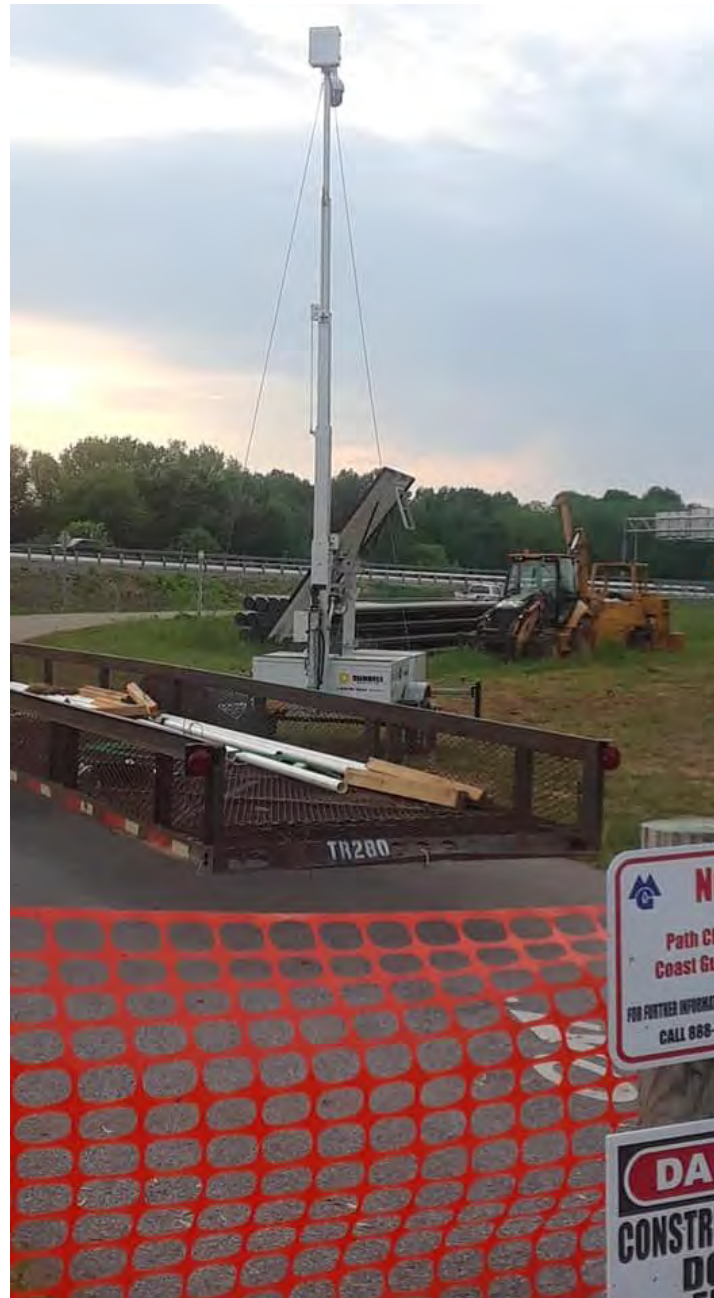


EXHIBIT BBB - JCHLC 06/18/2019 MEETING MINUTES, PAGE 2

motion which passed unanimously. A vote relating to the final budget will occur at the August meeting, once the Commission knows about the Fairs & Festivals grant and FY-19 carryover.

Resolution for Deed of Conservation Easement: The easement is known as the [REDACTED] [REDACTED] Mrs. Creamer moved to authorize Mr. Burke to sign the easement. Mr. Koonce seconded the motion, which passed unanimously.

Court House Committee: Mr. Koonce reported the committee hadn't met recently. He did ask that the JCHLC request the County Commission appoint someone from the JCHLC or historic preservation community to the newly forming Facilities Committee which is charged with deciding how to rework the first of block of Washington Street.

AmeriCorps Report: [REDACTED] updated the JCHLC about the social media accounts the Commission maintains. She noted Instagram is doing well and Facebook has remained stable. She has also been working on Middleway design standards and noted someone will need to be at the JCHLC table at Middleway Day. Mrs. Creamer and Mr. Koonce indicated they will both be there all day for other efforts and can help out when needed.

Status of National Register Nominations: [REDACTED] was absent but sent a report. The nomination for [REDACTED] farm is awaiting review by the state. The nomination for [REDACTED] is halfway complete.

Status of Zoning and Section 106 Reviews: Mr. Burke reported the site plan for Rocky Ridge development will be voted on at the July Planning Commission meeting. Rocky Ridge house is right next to the proposed development. The house is eligible for the National Register but isn't yet on the County register. Mr. Burke believes increased vegetation will shield the house from the development site. Mr. Horter is preparing a letter to the Planning Commission and developer to that effect. No report on Rt. 340.

Status of Duffields Depot: No changes at present. The JCHLC is waiting on additional funding to continue work. Four windows were donated. The current plan is to brick up one of the entrances, thus returning the building to its 1839 appearance.

Commissioner Comments: Mr. Koonce raised concern about the African American graveyard in Kearneysville that is adjacent to both Rockwool and pipeline construction. Mr. Burke confirmed there is nothing the JCHLC can do, but suggested [REDACTED] be contacted for assistance in gravestone preservation. Mr. Koonce also reported [REDACTED] from the Preservation Alliance of West Virginia will be giving a presentation in August in Shepherdstown about historic movie houses in WV.

Mrs. Creamer moved to adjourn the meeting at 8:14 pm. Mr. Koonce seconded the motion which passed unanimously.

Respectfully submitted,

/s/

H.S. Leigh Koonce, Secretary

Jefferson County Historic Landmarks Commission

EXHIBIT CCC - JCHLC 08/08/18 MEETING MINUTES, PAGE 3

Preservation to fund a topographical survey at Duffields. Horter noted that there are some new railroad grants because of the anniversary of the golden spike and the transcontinental railroad, but he was not certain B&O depots would be eligible. Kelly is also working on moving [REDACTED] Civil War driving tours to a smaller, less expensive format. She is also working on new brochures for the Beeline March and the Morgan's Grove Historic District.

- F. Status of NR nomination – *The Rocks* – Kelly
Kelly is still working on the nomination and will stay in touch with Jeff Smith at the WVSHPO from Texas.
- G. Status of JC Courthouse becoming a NHL – Kelly
Kelly has not heard from Kathryn Smith at the NHL office since the beginning of July. She said to expect a response in 4-6 weeks and that she is hoping to give the commission some good direction as it pursues the nomination. Kelly expects to hear from her soon.
- H. Status of [REDACTED] house demolition – Burke
This project is now in the contractor's hands. The contractor says he can get his equipment up the drive, but River Road keeps flooding.
- I. Report on BZA appeal – Burke
The JCHLC voted to appeal the zoning administrator's decision that section 4.4C of the zoning ordinance was ambiguous and did not apply to the planned development at [REDACTED] Farm. The BZA meeting was Thursday, June 28. Jarred Adams was hired to be the JCHLC's attorney. Most of the attorneys Burke interviewed had a conflict of interest and were associated with either the developer or the lender. Adams filed the motion. The zoning administrator's statement could have been read to apply to all National Register structures, but during the meeting she said that this decision did not apply to all National Register sites. The JCHLC lost the appeal and at this point cannot go to the circuit court.
- J. Status of [REDACTED] Arboretum & Garden Plan – Burke
Burke met with Amanda Harmon, who is still working at [REDACTED] Farm, and is meeting with landscape architect [REDACTED] next week. They will not be presenting to the project to the landmarks commission until September or October.
- K. Selection of new part-time AmeriCorps member – Burke
[REDACTED] will be taking over as the AmeriCorps member with the JCHLC. She will be part-time and shared with Main Street Martinsburg.
- L. Rockwool
[REDACTED] a National Register property, shares a boundary with Jefferson Orchards, but that it will not share a boundary with the Rockwool plant. Burke wants to know if JCHLC would like to issue a resolution/letter stating its opposition to the construction of the factory, because of the visual and sound impacts on nearby historic resources. [REDACTED] responding to a question from Hefestay, explained that the county commission voted on a pilot agreement for Rockwool to lure them to Jefferson County. Once Rockwool chose Ranson instead of the county property, the county commission took no further part.

Koonce moved that a resolution be approved and signed at the next meeting. Horter seconded, and passed.

EXHIBIT DDD - JCHLC 10/10/18 MEETING MINUTES, PAGE 1



Jefferson County Historic Landmarks Commission October 10, 2018 Jefferson County Commission Meeting Room

Members present: Martin Burke, Chairman, H.S. Leigh Koonce, Jack Hefestay, Ben Horter, Tony Troxel.

Guests present: (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Jim Surkamp, (b) (6) Privacy, (b) (7)(C) Enforcement Privacy and three others.

Mr. Burke called meeting to order at 7:04 pm

Public Comment:

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy spoke with regard to his opposition to Rockwool and requested the HLC weigh in regarding the smoke stacks that will be erected.

-Jim Surkamp spoke with regard to Rockwool and highlighted the proximity to the (b) (6) Privacy, (b) (7)(C) Enforcement Privacy property and the Greenback Raid.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy questioned the membership of the HLC and its publication of meeting minutes. She also spoke in opposition to Rockwool.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy spoke against the Rockwool project and highlighted the proximity of her family farm, (b) (6) Privacy, (b) (7)(C) Enforcement Privacy to the project.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy suggested the HLC membership, as County Commission appointed agents, are able to request any documents necessary to make an informed decision relating to their decision-making processes. (b) (6) Privacy, (b) (7)(C) Enforcement Privacy also raised concerns about the Charles Town Presbyterian Church Cemetery and its relocation.

Mr. Burke responded to (b) (6) Privacy, (b) (7)(C) Enforcement Privacy and indicated the property is within a municipal boundary and, thus, not under the jurisdiction of the HLC. Mr. Burke spoke with Seth Rivard, Charles Town City Planner, and Mr. Rivard indicated Charles Town is not taking a position relating to the cemetery.

Mr. Burke introduced Tony Troxel who was appointed by the County Commission to the vacancy created by the resignation of (b) (6) Privacy, (b) (7)(C) Enforcement Privacy.

August Minutes: Mr. Horter moved to approve the minutes as presented. Mr. Hefestay seconded the motion which passed unanimously.

EXHIBIT EEE - JCHLC COURTHOUSE COMMITTEE

f. Changed Appendix C, principal and conditional use table, for villages to allow some commercial uses, this is under the category of adaptive reuse

C. JC Courthouse Committee – Koonce

The courthouse committee has not met since the last JCHLC meeting. Koonce noted that there was a leak due to a burst pipe about two weeks ago but there was no damage to any documents. He also noted that Steve Redding is the sitting judge until the election in May, and his staff can handle any small problems that arise. Burke noted that the final decision on the courthouse windows was to remove the exterior storms and replace them with magnetic interior storms and repair the wood windows. This will greatly improve the appearance of the courthouse.

D. Status of projects at [REDACTED] Farm – Burke

The JCHLC just paid to have the stairs in the barn reorganized. The work was finished on Monday and really opens the space inside. There are several events coming to [REDACTED] Farm. On April 20-21, there will be a 2-day bread-making class, but baking for the public will not begin until May 12. JC Parks & Recreation, with whom the JCHLC has a MOU, has planned 2 events: a wedding and a craft fair. The wedding will take place on April 28. They will be erecting tents on the site and using the barn as a dance area. May 5 is the Blue Ridge Arts and Crafts Fair, and the 60 vendor spots sold out. Koonce asked if the JCHLC has established a plan to monitor the site before and after the events. Burke replied that someone from the JCHLC as well as Parks and Rec will be checking the farm. The JCHLC is due to renew its MOU in May, and the next few weeks will inform both parties about the capacity of the farm for these kinds of events. The JCHLC has also added a loop trail which is maintained by Parks & Rec. The JCHLC is taking on a student intern in Shepherd's Geomatics program who will be in the GIS office working with a local landscape architect. She will plan a 10-year evolution of the JCHLC's 10 acres & the Board of Education adjoining 40 acres to create the [REDACTED] Farm Native Species Park." The site will focus on WV native species. The JCHLC can expect a presentation on the proposed plan at the August meeting.

E. Status of [REDACTED] NR nomination – [REDACTED]

[REDACTED] said the nomination remains in review in Washington, but the JCHLC should hear something this month.

F. Status of Rte. 340 – MOU with WVDOH – Horter

The JCHLC has until the end of May to come up with a plan for the National Register nominations, oral histories, and interpretive plans around Rippon. The WVDOH must approve the plan, and the JCHLC must prioritize the activities. After the money has been sent, the JCHLC has 5 years to complete the projects. Koonce asked if the MOU was voted on, and a review of last year's minutes' show that it was voted on in September 2017.

G. Status of interpretative projects – Kelly



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

September 27, 2019

Return Receipt Requested

(b) (6) Privacy

In Reply Refer to:

EPA File Nos. 03R-19-R3,
04R-19-R3 and 05R-19-R3

(b) (6) Privacy

Winchester, VA 22601

(b) (6) Privacy

Charles Town, WV 25414

Certified Mail #: 7015 3010 0001 1267 1647
Jennifer King
Chair
Rural Agricultural Defenders
Post Office Box 445
Kearneysville, WV 25430

Re: Acknowledgement of Administrative Complaint

Dear (b) (6) Privacy King, Brogna and April:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), received your correspondence on September 24, 2019, alleging discrimination based on race in violation of Title VI of the Civil Rights Act of 1964 involving the West Virginia Department of Environmental Protection (03R-19-R3), the Jefferson County Office of Engineering (04R-19-R3) and the Office of the County Clerk of Jefferson County (05R-19-R3).

ECRCO is responsible for processing and resolving complaints alleging discrimination by programs or activities that receive financial assistance from the EPA. ECRCO will review the correspondence in light of EPA's nondiscrimination regulation to determine whether it is a

(b) (6) Privacy

Page 2

Ms. Jennifer King

complaint that falls within ECRCO's jurisdiction. Once this jurisdictional review is completed, ECRCO will notify you as to whether it will accept the complaint for investigation, or reject, or refer the complaint to another Federal agency.

In the interim, if you have any questions about the status of this correspondence, please contact me by telephone at (202) 564-4174 or by email at rhines.dale@epa.gov.

Sincerely,



Dale Rhines
Deputy Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Angelia Talbert-Duarte
Deputy Associate General Counsel
Civil Rights & Finance Law Office

Cecil Rodrigues
Acting Regional Counsel
Deputy Civil Rights Official
EPA Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

September 27, 2019

Return Receipt Requested

Certified Mail #: 7015 3010 0001 1267 1661

In Reply Refer to:

EPA Complaint No: 04R-19-R3

Roger Goodwin
Chief County Engineer
Jefferson County Office of Engineering
Post Office Box 716
116 East Washington Street, Suite 100
Charles Town, WV 25414

Re: Acknowledgement of Receipt of Administrative Complaint

Dear Mr. Goodwin:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), received a complaint against the Jefferson County Office of Engineering on September 24, 2019.

ECRCO is responsible for processing and resolving complaints alleging discrimination by programs or activities that receive financial assistance from the EPA. ECRCO will review the complaint in light of EPA's nondiscrimination regulation to determine whether it is a complaint that falls within ECRCO's jurisdiction. Once this jurisdictional review is completed, ECRCO will notify you as to whether it will accept the complaint for investigation or reject or refer the complaint to another Federal agency.

In the interim, if you have any questions about the status of this correspondence, please contact me by telephone at (202) 564-4174, or by email at Rhines.Dale@epa.gov.

Sincerely,

A handwritten signature in red ink, appearing to read "Dale Rhines".

Dale Rhines
Deputy Director
External Civil Rights Compliance Office
Office of General Counsel

Mr. Roger Goodwin

Page 2

cc: Angelia Talbert-Duarte
Deputy Associate General Counsel
Civil Rights & Finance Law Office

Cecil Rodrigues
Acting Regional Counsel
Deputy Civil Rights Official
EPA Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

October 17, 2019

Return Receipt Requested

In Reply Refer to:

EPA Complaint Nos. 03R-19-R3
and 04R-19-R3

Certified Mail #: 70153010000112671739
Jennifer King
Rural Agricultural Defenders
Post Office Box 445
Kearneysville, WV 25430

(b) (6) Privacy

Charles Town, WV 25414

(b) (6) Privacy

Winchester, VA 22601

Re: Acceptance of Administrative Complaints

Dear Ms. King, (b) (6) Privacy

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is accepting for investigation an administrative complaint filed against the Jefferson County Commission (JCC) received by the EPA on September 23, 2019. The complaint was filed by the Rural Agricultural Defenders (Complainant) and two individuals, and alleges that the JCC, as well as the Jefferson County Office of Engineering and the Jefferson County Clerk's Office discriminated against African American descendants of those buried at the Boyd Carter Memorial Cemetery in Kearneysville, West Virginia, on the basis of race in violation of Title VI of the Civil Rights Act of 1964, and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7.¹

¹ The complaint referred to the Jefferson County Office of Engineering and Clerk's Office as separate entities. These were separately acknowledged directly to those offices on September 27, 2019. ECRCO has merged the two

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

After careful consideration, ECRCO has determined that the complaint meets the jurisdictional requirements stated above. First, the allegation is in writing. Second, it alleges that discrimination occurred in violation of EPA's nondiscrimination regulation. Third, the alleged discriminatory acts occurred within 180 days of the filing this complaint. Finally, it alleges discriminatory acts by the WVDEP and the JCC, both of which are recipients of EPA financial assistance.

For the WVDEP, ECRCO will investigate the following issues:

1. Whether the WVDEP discriminated against African American descendants of those buried at the Boyd Carter Memorial Cemetery on the basis of race in violation of Title VI of the Civil Rights Act of 1964 and EPA's nondiscrimination regulation found at 40 C.F.R. Part 7,
 - a. During its public involvement process relating to Mountaineer Gas' application for Registration No. WVR311281 under WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities, including, by limiting their participation and providing allegedly misleading information; and
 - b. In its process for approving and approval of Mountaineer Gas' registration under the Stormwater Construction General Permit, which allegedly resulted in the disturbance of graves on the Cemetery grounds; and
2. Whether the WVDEP has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that all recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to the WVDEP's services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with

separate complaints into one using Complaint No. 04R-19-R3 as the file number and naming the Recipient as the Jefferson County Commission, which has budgetary authority over the two offices. As such, Complaint No. 05R-19-R3 is closed as of the date of this letter.

disabilities, and whether the WVDEP has a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.

For the JCC, ECRCO will investigate the following issues:

1. Whether the JCC's (and/or its component agencies: the County Clerk and the Office of Engineering) alleged failure to ensure the veracity of maps and other documentation provided by Mountaineer Gas during the review process for Mountaineer's application for registration under the West Virginia Stormwater Construction General Permit (Registration #WVR311281 under General Permit #WV0116815) discriminated against African American descendants of those buried at the Boyd Carter Memorial Cemetery by allegedly disturbing graves on the Cemetery grounds; and
2. Whether the JCC has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that all recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to the JCC's services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether the JCC has a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.

The initiation of an investigation of the issues above is not a decision on the merits. ECRCO is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with you and the recipients, if appropriate, and determine next steps utilizing ECRCO's internal procedures. In the intervening time, ECRCO will provide the WVDEP and the JCC with opportunities to make written submissions responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving their copies of the letter notifying them of the acceptance of Administrative Complaint #03R-19-R3 and #04R-19-R3. *See* 40 C.F.R. § 7.120(d)(1)(ii-iii).

EPA's nondiscrimination regulation provides that ECRCO shall attempt to resolve complaints informally whenever possible. *See* 40 C.F.R. § 7.120(d)(2). Accordingly, ECRCO will contact the WVDEP and the JCC within 10 days of the date of this letter to provide information about ECRCO's complaint process, and to offer and discuss the informal resolution agreement process with the WVDEP and the JCC as a potential path for resolution of the issues which ECRCO has accepted for investigation. If the WVDEP and the JCC agree to engage in the informal resolution agreement process, ECRCO will suspend its complaint investigation. In the event that the informal resolution agreement process fails to result in an Informal Resolution Agreement between ECRCO and the WVDEP and/or the JCC, ECRCO will notify the WVDEP and/or the JCC as well as the Complainant that ECRCO has resumed its complaint investigation and will issue preliminary findings within 180 days of the start of the investigation – excluding any days

Ms. Jennifer King

(b) (6) Privacy

Page 4

spent in the informal resolution agreement process.²

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with ECRCO.

If you have questions about this letter, please feel free to contact me at (202)564-9649, by email at dorka.lilian@epa.gov, or Jonathan Stein, Case Manager, at (202)564-2088, by email at stein.jonathan@epa.gov, or by mail at U.S. EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.

Sincerely,



Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Angelia Talbert-Duarte
Deputy Associate General Counsel
Civil Rights & Finance Law Office

Cecil Rodrigues
Regional Counsel
Deputy Civil Rights Official
U.S. EPA Region 3

² *See* 40 C.F.R. § 7.115(c).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

October 17, 2019

Return Receipt Requested

Certified Mail # 70153010000112674020

In Reply Refer to:

EPA Complaint No. 04R-19-R3

Stephanie Grove
County Administrator
124 E. Washington Street
Charles Town, WV 25414

Re: Acceptance of Administrative Complaint

Dear Ms. Grove:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is accepting for investigation an administrative complaint filed against the Jefferson County Commission (JCC) received by the EPA on September 23, 2019. The complaint was filed by the Rural Agricultural Defenders (Complainant) and two individuals, and alleges that the JCC, as well as the Jefferson County Office of Engineering and the Jefferson County Clerk's Office¹ discriminated against African American descendants of those buried at the Boyd Carter Memorial Cemetery in Kearneysville, West Virginia, on the basis of race in violation of Title VI of the Civil Rights Act of 1964, and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7.

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe alleged discriminatory act(s) that, if true, may violate the EPA's nondiscrimination regulation (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

¹ The complaint referred to the Jefferson County Office of Engineering and Clerk's Office as separate entities. These were separately acknowledged directly to those offices on September 27, 2019. ECRCO has merged the two separate complaints into one using Complaint No. 04R-19-R3 as the file number and naming the Recipient as the Jefferson County Commission, which has budgetary authority over the two offices. As such, Complaint No. 05R-19-R3 is closed as of the date of this letter. In addition, ECRCO has opened a related complaint against the West Virginia Department of Environmental Protection (WVDEP) that is being addressed under separate cover.

After careful consideration, ECRCO has determined that the complaint meets the jurisdictional requirements stated above. First, the allegation is in writing. Second, it alleges that discrimination occurred in violation of EPA's nondiscrimination regulation. Third, the alleged discriminatory acts occurred within 180 days of the filing this complaint. Finally, it alleges discriminatory acts by the JCC, a recipient of EPA financial assistance.

ECRCO will investigate the following issues:

1. Whether the JCC's (and/or its component agencies: the County Clerk and the Office of Engineering) alleged failure to ensure the veracity of maps and other documentation provided by Mountaineer Gas during the review process for Mountaineer's application for registration under the West Virginia Stormwater Construction General Permit (Registration #WVR311281 under General Permit #WV0116815) discriminated against African American descendants of those buried at the Boyd Carter Memorial Cemetery by allegedly disturbing graves on the Cemetery grounds; and
2. Whether the JCC has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that all recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to the JCC's services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether the JCC has a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.

The initiation of an investigation of the issues above is not a decision on the merits. ECRCO is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with the Complainant and the JCC, if appropriate, and determine next steps utilizing ECRCO's internal procedures. Generally, the investigation and resolution options and procedures identified in EPA's nondiscrimination regulation and ECRCO's Case Resolution Manual (CRM) will be utilized for the complaint investigation process. We invite you to review the CRM for a more detailed explanation of ECRCO's case resolution process available at https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf.

In the intervening time, ECRCO is providing the JCC with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving a copy of this letter notifying the JCC of the acceptance of Administrative Complaint #04R-19-R3. *See* 40 C.F.R. § 7.120(d)(1)(ii-iii).

EPA's nondiscrimination regulation provides that ECRCO shall attempt to resolve complaints informally whenever possible. *See* 40 C.F.R. § 7.120(d)(2). Accordingly, ECRCO will contact the JCC within 10 days of the date of this letter to provide information about ECRCO's complaint process, and to offer and discuss the informal resolution agreement process with the JCC as a potential path for resolution of the issues which ECRCO has accepted for investigation.

If the JCC agrees to engage in the informal resolution agreement process, ECRCO will suspend its complaint investigation. In the event that the informal resolution agreement process fails to result in an Informal Resolution Agreement between ECRCO and the JCC, ECRCO will notify the JCC and the Complainant that ECRCO has resumed its complaint investigation and will issue preliminary findings within 180 days of the start of the investigation – excluding any days spent in the informal resolution agreement process.²

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with ECRCO.

If you have questions about this letter, please feel free to contact me at (202)564-9649, by email at dorka.lilian@epa.gov, or Jonathan Stein, Case Manager, at (202)564-2088, by email at stein.jonathan@epa.gov, or by mail at U.S. EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.

Sincerely,



Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Angelia Talbert-Duarte
Deputy Associate General Counsel
Civil Rights & Finance Law Office

Cecil Rodrigues
Regional Counsel
Deputy Civil Rights Official
U.S. EPA Region 3

Jacqueline C. Shadle
Jefferson County Clerk
P.O. Box 208
Charles Town, WV 25414

Roger Goodwin, Chief County Engineer
Jefferson County Office of Engineering
P.O. Box 716
116 East Washington Street, Suite 100
Charles Town, WV 25414

² *See* 40 C.F.R. § 7.115(c).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

January 7, 2020

Return Receipt Requested

Certified Mail #: 7015 3010 0001 1267 2088

In Reply Refer to:

EPA Complaint No.: 04R-19-R3

Ms. Jennifer King
Rural Agricultural Defenders
Post Office Box 445
124 E. Washington Street
Kearneysville, WV 25430

(b) (6) Privacy

Charles Town, WV 25414

(b) (6) Privacy

Winchester, VA 22601

Re: Administrative Closure, EPA Complaint No. 04R-19-R3

Dear Ms. King, (b) (6) Privacy

This letter is to inform you that the U.S. Environmental Protection Agency's (EPA) External Civil Rights Compliance Office (ECRCO) is administratively closing, as of the date of this letter, Complaint No. 04R-19-R3 as it relates to the Jefferson County Commission (hereinafter "JCC").

Complaint No. 04R-19-R3 was filed by the Rural Agricultural Defenders and two individuals on September 23, 2019. Pursuant to EPA's nondiscrimination regulation, ECRCO conducted a preliminary review of the administrative complaint to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged

discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

Based on a careful review of the available information at the time, ECRCO determined that the administrative complaint met the jurisdictional requirements stated above. Accordingly, on October 17, 2019, ECRCO accepted for investigation the following issues with respect to the JCC:

1. Whether the JCC's (and/or its component agencies, the County Clerk and the Office of Engineering) alleged failure to ensure the veracity of maps and other documentation provided by Mountaineer Gas during the review process for Mountaineer's application for registration under the West Virginia Stormwater Construction General Permit (Registration #WVR311281 under General Permit #WV0116815) discriminated against African American descendants of those buried at the Boyd Carter Memorial Cemetery by allegedly disturbing graves on the Cemetery grounds; and
2. Whether the JCC has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that all recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to the JCC's services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether the JCC has a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.

However, during ECRCO's investigation of these issues, the JCC asserted it does not receive any federal financial assistance from the EPA, either directly or indirectly, and provided supporting documentation to this effect. ECRCO reviewed the information provided by the JCC, and also conducted an assessment of budget documentation from the West Virginia Department of Environmental Protection and the JCC's most recent budget proposals (2017-2020).

Based on ECRCO's review of this additional information, ECRCO was unable to identify any direct or indirect funding from EPA to the JCC, and therefore, was not able to establish that the JCC is a recipient of EPA financial assistance. As such, ECRCO does not have jurisdiction over the JCC and Complaint No. 04R-19-R3 is administratively closed as of the date of this letter.¹

If you have any questions, please feel free to contact me at 202-564-9649, by e-mail at dorka.lilian@epa.gov, or Jonathan Stein, Case Manager at 202-564-2088, by email at

¹ Complaint No. 03R-19-R3, as relates to the West Virginia Department of Environmental Protection, remains under investigation by ECRCO.

Ms. Jennifer King

(b) (6) Privacy

Page 3

stein.jonathan@epa.gov or U.S. mail at U.S. EPA, Office of General Counsel (Mail Code 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460.

Sincerely,



Lilian S. Dorka
Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

Diana Esher
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 3

Cecil Rodrigues
Regional Counsel
U.S. EPA Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

January 7, 2020

Return Receipt Requested

Certified Mail #: 7015 3010 0001 1267 2118

In Reply Refer to:

EPA Complaint No.: 04R-19-R3

Ms. Stephanie Grove
County Administrator
Jefferson County Commission
124 E. Washington Street
Charles Town, WV 25414

Re: Administrative Closure, EPA Complaint No. 04R-19-R3

Dear Administrator Grove:

This letter is to inform you that the U.S. Environmental Protection Agency's (EPA) External Civil Rights Compliance Office (ECRCO) is administratively closing, as of the date of this letter, Complaint No. 04R-19-R3 as it relates to the Jefferson County Commission (hereinafter "JCC").

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If you have any questions, please feel free to contact me at 202-564-9649, by e-mail at dorka.lilian@epa.gov, or Jonathan Stein, Case Manager at 202-564-2088, by email at stein.jonathan@epa.gov or U.S. mail at U.S. EPA, Office of General Counsel (Mail Code 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460.

Sincerely,



Lilian S. Dorka
Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

Diana Esher
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 3

Cecil Rodrigues
Regional Counsel
U.S. EPA Region 3

Nathan Cochran
Assistant Prosecuting Attorney
Jefferson County Prosecuting Attorney's Office

Email information to:

Title_VI_Complaints@epa.gov

Fax: (202) 565-0196
(202) 501-1836

From: (b) (6) Privacy, (b) (7)(C) Enforcement Privacy
Sent: Thursday, January 9, 2020 12:24 AM
To: Title VI Complaints <Title_VI_Complaints@epa.gov>
Subject: Inquiry Only

Dear EPA Title VI Administrator,

My name is (b) (6) Privacy, (b) (7)(C) Enforcement Privacy I work with the Hawaii Department of Agriculture, Pesticides Branch (HDOA). I am in a difficult situation and I believe it stems from my involvement with a civil rights (Title VI) complaint: EPA File No. 44RNO-16-R9. In this case, I was slated to be the Title VI Coordinator for the Pesticides Branch. On an unfortunate turn of events and to my disadvantage, 44RNO-16-R9 was informally resolved by HDOA's submission of a Title VI Plan, which provides a process by which to receive public complaints. Up to the month of July 2019 and into the month of September 2019, I was protected by 44RNO-16R9. However, by Dec. 4, 2019, by a roundabout way of being subjected to performance expectation with a mandated deadline imposed on me of Dec. 4, 2019, which I did not meet due to unreasonable expectations, I received a demotion and loss of wages (commensurate decrease in pay). I believe that this stemmed from my participation with 44RNO-16-R9. Is there a way that you could assist me to regain my original position or to be lateralled out to an equivalent position with my employer?

If you are not the right agency to contact, then would you please refer me to an agency that would be able to help me on this matter.

Please note that the attachments are 'must share' items I have to share with you in order that you can understand my current situation better.

Would you please advise.

Thank you.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

Harrison, Brenda

From: McGhee, Debra
Sent: Friday, January 10, 2020 11:16 AM
To: Harrison, Brenda
Cc: Harrison, Brenda
Subject: FW: Inquiry Only
Attachments: 4_180725_Email from Delanie.pdf; 2EarthJustice EPA draft resolution.doc; 1EPA DRAFT Informal Resolution Agreement HDOA (44RNO-16-R9).pdf; 3_180914_Email from Delanie.pdf

For the P: Drive file – (b) (6) Privacy, (b) (7)(C) Enforcement Privacy sent some attachments along with his complaint.



Debra McGhee
TEAM LEAD
External Civil Rights Compliance Office
Office of General Counsel
Environmental Protection Agency
PHONE: 202-564-4646



From: Rhines, Dale <rhines.dale@epa.gov>
Sent: Thursday, January 9, 2020 12:28 PM
To: McGhee, Debra <mcghee.debra@epa.gov>
Subject: FW: Inquiry Only

Debra,
Can you take a look and give me your thoughts? Thanks!

From: Title VI Complaints <Title_VI_Complaints@epa.gov>
Sent: Thursday, January 9, 2020 9:38 AM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>
Subject: Fw: Inquiry Only

Mail Information to:
Director of the Office of Civil Rights
U.S. Environmental Protection Agency
Mail code 1201A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

(b) (6) Privacy

From:

Sent: Wednesday, July 25, 2018 11:29 AM

To:

(b) (6) Privacy

Cc:

Subject:

Attempt to resolve EARTHJUSTICE COMPLAINT 44RNO-16-R9

Attachments:

EPA DRAFT Informal Resolution Agreement HDOA (44RNO-16-R9).pdf; EarthJustice EPA draft resolution.doc

Good morning my friends!!

Attached please find EPA's version of the draft resolution agreement (the .pdf file) and my version of the draft resolution agreement (the .doc file).

All of the things contained in the Complaint Procedures and Non-Discrimination Obligations (attached to my draft) are the bare minimum Title VI requirements that have been in effect for decades. A review of the non-discrimination policies and procedures on the Department of Transportation and the Department of Education websites demonstrate what the departments had to do as a result of similar lawsuits. It's a miracle HDOA went this long without a lawsuit.

The HDOA website needs to immediately, (if not sooner), reflect the availability of interpretation services and necessary accommodations upon request. EPA also wants the information on the website translated for non-English speakers/readers. We may be able to get away with providing information in Japanese, Chinese, Korean, Tagalog, Ilocano, and Pacific Islander. EPA also wants the Title VI Coordinator position to be referred to as the "Non-discrimination Coordinator." (Yes - that was an actual EPA requirement that the position title be changed to non-discrimination coordinator!!)

As to the non-discrimination posting requirements, there are posters available on-line that comply with all the requirements. There is also a laminated poster with all necessary compliance information available for purchase. The non-discrimination posters should be posted at all HDOA offices.

I have gathered this compliance information from "the law" (State and Federal) and a review of at least six EPA agreements settling complaints with other States.

While the entire HDOA is subject to these non-discrimination requirements, because the Earthjustice complaint is directed towards the pesticide branch, it is incumbent upon the pesticide branch to lead the charge toward Title VI compliance.

My version of the draft resolution is based upon the theory that there is already a non-discrimination program in place and a person need only inquire about how to file a complaint to obtain that information. Unfortunately, the how to file a complaint information is required to be "accessible." EPA has been checking the HDOA website to verify compliance.

If we do not make these changes immediately, and we wish to challenge the Title VI compliance aspect of the complaint, we could do that, but we would most likely lose that battle and suffer the "compliance consequences" after that. EPA has some mean "compliance consequences."

And could someone PLEASE PLEASE PLEASE correct the spelling of "accessibility" on the HDOA website – in two places it is spelled "accessibility" : (

Let me know if you have any questions!!

(b) (6) Privacy

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(b) (5) Deliberative



(b) (5) Deliberative



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(b) (5) Deliberative



(b) (5) Deliberative



(b) (5) Deliberative



Balinasay, Jose T

From: (b) (6) Privacy
Sent: Friday, September 14, 2018 9:48 AM
To: (b) (6) Privacy
Cc: (b) (6) Privacy

Subject: RE: Title VI Law (Anti-Discrimination)
Attachments: 42 USC subchapter V, Chapter 21 Title VI.doc; 40 CFR part 7 re nondiscrimination requirements.doc

Well this email stream sadly explains a lot :

The law as related to Title VI and HDOA, is set forth in 42 U.S.C. sections 2000d through 2000d-7. For purposes of this discussion, the regulations that implement Title VI are 40 CFR Part 7 entitled "Nondiscrimination in programs or activities receiving federal assistance from the environmental protection agency", and Subpart D entitled "Requirements of Applicants and Recipients".

A copy of 42 U.S.C. sections 2000d et seq. is attached for review.

42 U.S.C. section 2000d entitled "Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin" states:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination **under any program or activity receiving Federal financial assistance.**

42 U.S.C. section 2000d-7 entitled "Civil rights remedies equalization" states:

(a) General provision

(1) **A State shall not be immune** under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], **title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.**

(2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

(b) Effective date

The provisions of subsection (a) shall take effect with respect to violations that occur in whole or in part after **October 21, 1986.**

In 2016, EarthJustice filed a complaint with the EPA alleging that the HDOA pesticides program discrimination against native Hawaiians **(there is no way they could prove this)**, and that HDOA, as the recipient of federal funds from EPA, did not have a Title VI program in place **(this they could prove)**.

HDOA receives funds directly from EPA in addition to funds from the U.S. Dept. of Ag (a federal agency with similar Title VI requirements). I have located records dating back to 2008 showing HDOA has received at least \$1,000,000 + each year from these federal agencies (in 2009 it was almost \$4,500,000). So there is no way we can deny being the recipient of federal money from EPA.

In each application to EPA for money, under the section "Pre-award Compliance Review Report for all Applicants and Recipients Requesting EPA Financial Assistance" asks: "Does the applicant/recipient provide initial and continuing notice that it does not discriminate on the basis of race, color, national origin, sex, age, or disability in its programs or activities?" The question cites to 40 CFR sections 5.140 and 7.95. HDOA has consistently answered this question "Yes".

40 CFR section 7.95 Notice of nondiscrimination:

(a) *Requirements.* **A recipient shall provide initial and continuing notice** that it does not discriminate on the basis of race, color, national origin, age, or handicap in a program or activity receiving EPA assistance or, in programs or activities covered by section 13, on the basis of sex. Methods of notice must accommodate those with impaired vision or hearing. **At a minimum, this notice must be posted in a prominent place in the recipient's offices or facilities. Methods of notice may also include publishing in newspapers and magazines, and placing notices in recipient's internal publications or on recipient's printed letterhead. Where appropriate, such notice must be in a language or languages other than English. The notice must identify the responsible employee designated in accordance with §7.85.**

A copy of 40 CFR Part 7 is attached for review.

HDOA's initial defense was that HDOA, as a state agency within the executive branch, was covered by the Title VI program established by the Hawaii Department of Human Resource Development. EPA did not find that adequate. Thanks to the pesticide branch, who has made a great effort to at least give the appearance of Title VI compliance, had the appropriate information added to the website, placed anti-discrimination posters in publicly assessable areas, and worked to get an actual Title VI procedure in place. Shout out to the Pesticides Branch!!!

In responding to the EarthJustice complaint, HDOA has maintained its position that HDOA had, and has, a Title VI program in place, and all anyone had to do was call and they would be directed to the appropriate person. EPA now knows this is not the case. EPA and HDOA are in the process of trying to make this complaint just go away. The more stuff we can get done by next week, (the next EPA conference call), would go a long way in making this happen.

As to the Title VI compliance poster John suggested that HDOA use – **it contains all the necessary information.** I'm sure there are many more posters out there but frankly, be it from EPA or the U.S. Civil Rights office, as long as a poster goes up that contains the appropriate information I'm fine with that. If HR is concerned about using an "HR approved poster" please contact the Hawaii Department of Human Resource Development, hopefully they can provide some guidance, or maybe even an actual poster. Wouldn't that be nice!!!

Please read the attachments. This is the law, current as of today's date, and has been the law for decades.

I'm here if you need anything at all – email or call my direct line 586-1189.

WE CAN DO THIS – the sooner the better!!!

Delanie

(b) (6) Privacy

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any review, use, disclosure, or distribution by unintended recipients is prohibited by the *Electronic Communications Privacy Act*, 18 U.S.C. sections 2510-2521. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

From: (b) (6) Privacy

Sent: Thursday, September 13, 2018 4:38 PM

(b) (6) Privacy

Subject: FW: Title VI Law (Anti-Discrimination)

(b) (6) Privacy

In response to your request, I am cc-ing Delanie on this email.

Are we of the same understanding? (non-discrimination policy, fundamentally, is uniform nationally)

Please note:

The PPG fund that we receive, I believe is from the USDA. The USDA fund is administered by EPA. In this context, the primary role is played by the USDA. Thus, on logic construct, the USDA policy and procedure would fit the bill to apply here with anti-discriminatory policy.

This entire initiative stems from an Earth Justice complaint, which you are probably aware of. My understanding is, there is a procedural-gap on fielding complaints. Under an informal agreement, to which our Office of the State Attorney General and the EPA (I think, with the External Civil Rights Compliance Office) were parties to drafting and concurring on the settlement to addressing the procedural-gap (again, this is how I understand the case to be as a person recently coming into the picture). For this reason, the anti-discrimination posting has to be done. As to location, "Methods of Notification" is covered under Title IX and Section 504 (ruling schools and colleges) anti-discrimination notification regulations.

You are correct in identifying that the Title VI regulation does not specify the method to be used by federal grant recipients as to where to furnish notices on non-discrimination.

The intent of Title VI is broadly applied by the DLIR. The fundamental requirements of Title VI is adopted by DLIR. To me, what binds the two is that the non-discrimination policy has to be compatible to be non-discrepantly applicable nationally. On this account, the arm of DLIR is much more extensive.

Job searches are vital to supporting existence and daily living. The portal to EPA is more restrictive compared to DLIR's because, stereotypically, people see it as the authority for environmental concerns and not necessarily for equity concerns. For this reason, an employment bulletin board would be a central place that would draw the greatest number of eyes.

These are just my two cents' worth of thoughts.

With the above things said, I want to turn it over to Delanie.

Hi Delanie,

Could you please address the query made by Darcie? Thank you in advance for your kind response.

Regards.

Joe

From: (b) (6) Privacy
Sent: Thursday, September 13, 2018 3:42 PM
To: (b) (6) Privacy
(b) (6) Privacy
Subject: RE: Title VI Law (Anti-Discrimination)

Hi Joe,

I believe that this EPA brochure may be a better fit for the bulletin boards than the US DLIR poster. Please ask (b) (6) Privacy if this EPA brochure will be acceptable.

Also, for my records, please provide the reference where it says we need to post this.

Thanks!

(b) (6) Privacy

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any review, use, disclosure, or distribution by unintended recipients is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

From: (b) (6) Privacy

Sent: Thursday, September 13, 2018 1:22 PM

(b) (6) Privacy

Subject: RE: Title VI Law (Anti-Discrimination)

(b) (9)

We have just received a ruling from the Deputy Attorney General's Office (AG) on the poster in question here. The AG's Office says the poster is ok to post.

May I have your approval to go ahead with the postings of the poster on all the islands?

Thank you.

(b) (6)
Privacy

From: (b) (6) Privacy

Sent: Thursday, September 13, 2018 10:35 AM

To: (b) (6) Privacy

(b) (5), (b) (7)(C)

(b) (6) Privacy

Subject: FW: Title VI Law (Anti-Discrimination)

(b) (6) Privacy

(b) (6) from Hilo contacted us regarding your request to post the attached flyer on the Hilo Office bulletin board since HR maintains the bulletin boards for King Street, Maui, Kauai and Hilo Offices and approves the postings. We also noticed that this flyer was posted on the King Street bulletin board fronting the elevator on the 1st floor (which I removed for now).

Before we consider the posting, can you please confirm if the Deputy AG has confirmed if this the correct flyer to meet the PEST requirements?

Thanks!

[Redacted]

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From: (b) (6) Privacy

Sent: Wednesday, September 12, 2018 7:35 AM

(b) (6) Privacy

Subject: Title VI Law (Anti-Discrimination)

(b) (6) Privacy

Title VI Law has become part of our task in the program. Posting of this notice is one of the requirements to observing, in good faith, Title VI intent. For this reason, please print and post on notice boards the attached national policy.

Thank you.

(b) (6) Privacy



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

January 13, 2020

Return Receipt Requested

Certified Mail #: (b) (6) Privacy, (b) (7)(C) Enforcement Privacy

In Reply Refer to:

EPA Complaint No 02r-20-R9

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

Honolulu, HI 96817

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

Re: Acknowledgement of Administrative Complaint


Dear (b) (6) Privacy, (b) (7)(C) Enforcement Privacy

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), received your complaint against the Hawaii Department of Agriculture on January 9, 2020.

ECRCO is responsible for processing and resolving complaints alleging discrimination by programs or activities that receive financial assistance from the EPA. ECRCO will review the complaint in light of EPA's nondiscrimination regulation to determine whether it is a complaint that falls within ECRCO's jurisdiction. Once this jurisdictional review is completed, ECRCO will notify you as to whether it will accept the complaint for investigation or reject or refer the complaint to another Federal agency.

In the interim, if you have any questions about the status of this correspondence, please contact me by telephone at (202) 564-4174 or by email at rhines.dale@epa.gov.

Sincerely,

for 
Dale Rhines
Deputy Director
External Civil Rights Compliance Office

Office of General Counsel

cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

Deborah Jordan
Deputy Regional Administrator
US EPA Region 9

Sylvia Quast
Regional Counsel
US EPA Region 9



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

January 13, 2020

Return Receipt Requested

Certified Mail #: 7015 3010 0001 1267 2125

In Reply Refer to:

EPA Complaint No. 02r-20-R9

Scott Enright, Chair
Hawaii Department of Agriculture
Office of the Chairperson
1428 South King Street
Honolulu, HI 96814

Re: Acknowledgement of Receipt of Administrative Correspondence

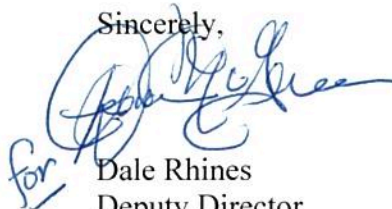
Dear Chair Enright:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), received correspondence on January 9, 2020, involving the Hawaii Department of Agriculture.

The ECRCO is responsible for processing and resolving complaints alleging discrimination by programs or activities that receive financial assistance from the EPA. ECRCO will review the correspondence in light of EPA's nondiscrimination regulation to determine whether it is a complaint that falls within ECRCO's jurisdiction. Once this jurisdictional review is completed, the ECRCO will notify you as to whether it will accept this complaint for investigation or reject or refer the complaint to another Federal agency.

In the interim, if you have any questions about the status of this correspondence, please contact me by telephone at (202) 564-4174 or by email at rhines.dale@epa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dale Rhines", is written over the word "Sincerely,". To the left of the signature, the word "for" is written in blue ink.

Dale Rhines
Deputy Director
External Civil Rights Compliance Office
Office of General Counsel

Scott Enright, Chair

Page 2

cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

Deborah Jordan
Deputy Regional Administrator
US EPA Region 9

Sylvia Quast
Regional Counsel
US EPA Region 9

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

January 31, 2020

Return Receipt Requested

Certified Mail #: (b) (6) Privacy

In Reply Refer To:

EPA Complaint No. 02r-20-R9

(b) (6) Privacy

Honolulu, HI 96817

(b) (6) Privacy

Re: Rejection of Administrative Complaint No. 02r-20-R9

Dear (b) (6) Privacy

This letter is to notify you that the Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) is rejecting your complaint filed against your employer the Hawaii Department of Agriculture (hereinafter "the HDOA"), on January 9, 2020. You allege that the HDOA retaliated against you because of your involvement with an unrelated complaint filed against HDOA with the ECRCO (EPA Complaint No. 44NO-16-R9) under Title VI of the Civil Rights Act of 1964 (Title VI). Specifically, you allege that after your supervisors designated you as the Non-Discrimination Coordinator as part of the resolution of EPA Complaint No. 44NO-16-R9, your supervisors subsequently demoted you effective December 18, 2019. In addition, on January 16, 2020, you sent an email stating that you thought your supervisors discriminated against you because of your race/national origin ("SE Asian, first generation Filipino").¹

ECRCO is responsible for processing complaints alleging that applicants for or recipients of EPA financial assistance have discriminated against persons, including on the basis of race, color or national origin, in violation of Title VI and other federal nondiscrimination laws and EPA's nondiscrimination regulation found at 40 C.F.R. Parts 5 and 7. EPA's nondiscrimination regulation prohibits retaliation, in part, for participating in an investigation, proceeding or hearing under 40 C.F.R. Part 7. *See* 40 C.F.R. § 7.100. After careful consideration, ECRCO has determined that it cannot accept your complaint for investigation. Accordingly, this matter is closed as of the date of this letter.

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate

¹ Complainant alleges discrimination based on race /national origin ("SE Asian, first generation Filipino"), educational attainment and cultural assimilation in the cited correspondence.

Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

Prohibited retaliation is defined by EPA regulations at 40 C.F.R. § 7.100 as adverse actions taken against a person “(a) for the purpose of interfering with any right or privilege guaranteed by the Acts² or this part, or (b) because the individual has filed a complaint or has testified, assisted or participated in any way in an investigation, proceeding or hearing under this part, or has opposed any practice made unlawful by this regulation.”

In general, ECRCO will accept, reject, or refer a complaint after considering the four jurisdictional factors discussed above. However, if ECRCO obtains information leading ECRCO to conclude that an investigation is unjustified for prudential reasons, ECRCO may reject the complaint.³ In an effort to determine jurisdiction, ECRCO conducted an interview with you on January 16, 2020, examined all documents provided by you, and requested additional clarification of certain matters. ECRCO's request for additional clarification sent to you on January 17, 2020, and again on January 21, 2020, received no response.

During the interview on January 16, 2020, ECRCO asked you for information about your participation in the resolution of EPA complaint number 44NO-16-R9. You explained that your supervisors designated you as the HDOA's Nondiscrimination Coordinator. Neither your interview statements nor the supporting documents you provided indicated that HDOA management opposed your efforts to help HDOA comply with EPA's nondiscrimination regulation. Rather, emails you provided included messages from the Deputy Attorney General for the HDOA encouraging HDOA staff to cooperate with efforts to post information about the HDOA's nondiscrimination program on the HDOA website and in offices. In addition, you stated that your supervisor listened to and acted on some of your ideas about looking at how other entities have complied with their nondiscrimination obligations.

During the interview you also spoke at length about the difficulty you experienced meeting the demands of management related to a contract concerning pesticide drift monitoring. During the ECRCO interview you stated that your demotion “stemmed from” your management of that contract and that there was no “concrete connection” between your work on the pesticide drift monitoring contract and your efforts as HDOA's Nondiscrimination Coordinator.

² The Acts here referred to are Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended and Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500.

³ *See* ECRCO Case Resolution Manual, Section 2.6, pp. 12-13, available at: https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf.

The information you shared during the January 16th interview, and the supporting documentation you provided via email, contradict your allegation that your demotion is retaliation as defined by EPA regulations at 40 C.F.R. §7.100. As such, ECRCO finds that the allegation is not sufficiently grounded in fact. Accordingly, we cannot accept this complaint for investigation.

With respect to the allegations of discrimination based on race/national origin (“SE Asian, first generation Filipino”) against the HDOA, please note that ECRCO has limited jurisdiction over employment complaints (see 40 C.F.R. §7.30 (a)(6).) As such, ECRCO must refer these claims to the EEOC. Federal regulations at 29 C.F.R. §1691.5(c) state that “[a]n agency shall transfer to EEOC a complaint of employment discrimination over which it does not have jurisdiction but over which EEOC may have jurisdiction within thirty days of receipt of a complaint.” Accordingly, as the EEOC may have jurisdiction over this matter, ECRCO is referring this complaint to the EEOC’s Honolulu office for appropriate action.

We have enclosed a copy of our letter to the EEOC referring your complaint, for your information. In light of the above, we are closing your complaint with ECRCO as of the date of this letter. If you have questions about this letter, please contact ECRCO Team Lead Debra McGhee, by phone at (202) 564-4646, by email at mcghee.debra@epa.gov or by mail at 1200 Pennsylvania Avenue, NW, Mail Code 2310A, Room 2524, Washington, DC, 20460-1000.

Sincerely,



Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

Enclosure

cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

Deborah Jordan
Deputy Regional Administrator
US EPA Region 9

Sylvia Quast
Regional Counsel
US EPA Region 9

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

January 31, 2020

Return Receipt Requested

Certified Mail #: 7015 3010 0001 1267 2194

In Reply Refer To:

EPA Complaint No. 02r-20-R9

Scott Enright, Chair
Hawaii Department of Agriculture
Office of the Chairperson
1428 South King Street
Honolulu, HI 96814

Re: Rejection of Administrative Complaint No. 02r-20-R9

Dear Chair Enright:

This letter is to notify you that the Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) is rejecting a complaint filed against the Hawaii Department of Agriculture (hereinafter "the HDOA"), on January 9, 2020. Complainant alleges that the HDOA retaliated against him because of his involvement with an unrelated complaint filed against HDOA with the ECRCO (EPA Complaint No. 44NO-16-R9) under Title VI of the Civil Rights Act of 1964 (Title VI). Specifically, Complainant alleges that after his supervisors designated Complainant as the Non-Discrimination Coordinator as part of the resolution of EPA Complaint No. 44NO-16-R9, Complainant's supervisors subsequently demoted him effective December 18, 2019. In addition, on January 16, 2020, Complainant sent an email stating that he thought his supervisors discriminated against him because of his race/national origin ("SE Asian, first generation Filipino").¹

ECRCO is responsible for processing complaints alleging that applicants for or recipients of EPA financial assistance have discriminated against persons, including on the basis of race, color or national origin, in violation of Title VI and other federal nondiscrimination laws and EPA's nondiscrimination regulation found at 40 C.F.R. Parts 5 and 7. EPA's nondiscrimination regulation prohibits retaliation, in part, for participating in an investigation, proceeding or hearing under 40 C.F.R. Part 7. *See* 40 C.F.R. § 7.100. After careful consideration, ECRCO has determined that it cannot accept this complaint for investigation. Accordingly, this matter is closed as of the date of this letter.

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate

¹ Complainant alleges discrimination based on race /national origin ("SE Asian, first generation Filipino"), educational attainment and cultural assimilation in the cited correspondence.

Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

Prohibited retaliation is defined by EPA regulations at 40 C.F.R. § 7.100 as adverse actions taken against a person “(a) for the purpose of interfering with any right or privilege guaranteed by the Acts² or this part, or (b) because the individual has filed a complaint or has testified, assisted or participated in any way in an investigation, proceeding or hearing under this part, or has opposed any practice made unlawful by this regulation.”

In general, ECRCO will accept, reject, or refer a complaint after considering the four jurisdictional factors discussed above. However, if ECRCO obtains information leading ECRCO to conclude that an investigation is unjustified for prudential reasons, ECRCO may reject the complaint.³ In an effort to determine jurisdiction, ECRCO conducted an interview with Complainant on January 16, 2020, examined all documents provided by Complainant, and requested additional clarification of certain matters. ECRCO's request for additional clarification sent to Complainant on January 17, 2020, and again on January 21, 2020, received no response.

During the interview on January 16, 2020, ECRCO asked Complainant for information about his participation in the resolution of EPA complaint number 44NO-16-R9. Complainant explained that his supervisors designated him as the HDOA's Nondiscrimination Coordinator. Neither Complainant's interview statements nor the supporting documents provided by Complainant indicated that HDOA management opposed his efforts to help HDOA comply with EPA's nondiscrimination regulation. Rather, emails Complainant provided included messages from the Deputy Attorney General for the HDOA encouraging HDOA staff to cooperate with efforts to post information about the HDOA's nondiscrimination program on the HDOA website and in offices. In addition, Complainant stated that his supervisor listened to and acted on some of his ideas about looking at how other entities have complied with their nondiscrimination obligations.

During the interview Complainant also spoke at length about the difficulty he experienced meeting the demands of management related to a contract concerning pesticide drift monitoring. During the ECRCO interview Complainant stated that his demotion “stemmed from” his management of that contract and that there was no “concrete connection” between

² The Acts here referred to are Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended and Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500.

³ *See* ECRCO Case Resolution Manual, Section 2.6, pp. 12-13, available at: https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf.

Complainant's work on the pesticide drift monitoring contract and his efforts as HDOA's Nondiscrimination Coordinator.

The information Complainant shared during the January 16th interview, and the supporting documentation provided by Complainant via email, contradict the allegation that his demotion is retaliation as defined by EPA regulations at 40 C.F.R. §7.100. As such, ECRCO finds that the allegation is not sufficiently grounded in fact. Accordingly, we cannot accept this complaint for investigation.

With respect to the allegations of discrimination based on race/national origin ("SE Asian, first generation Filipino") against the HDOA, please note that ECRCO has limited jurisdiction over employment complaints (see 40 C.F.R. §7.30 (a)(6).) As such, ECRCO must refer these claims to the EEOC. Federal regulations at 29 C.F.R. §1691.5(c) state that "[a]n agency shall transfer to EEOC a complaint of employment discrimination over which it does not have jurisdiction but over which EEOC may have jurisdiction within thirty days of receipt of a complaint." Accordingly, as the EEOC may have jurisdiction over this matter, ECRCO is referring this complaint to the EEOC's Honolulu office for appropriate action.

We have enclosed a copy of our letter to the EEOC referring this complaint, for your information. In light of the above, we are closing this complaint with ECRCO as of the date of this letter. If you have questions about this letter, please contact ECRCO Team Lead Debra McGhee, by phone at (202) 564-4646, by email at mcghee.debra@epa.gov or by mail at 1200 Pennsylvania Avenue, NW, Mail Code 2310A, Room 2524, Washington, DC, 20460-1000.

Sincerely,



Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

Enclosure

cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

Deborah Jordan
Deputy Regional Administrator
US EPA Region 9

Sylvia Quast
Regional Counsel
US EPA Region 9

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

January 31, 2020

Return Receipt Requested

Certified Mail#: 7015 3010 0001 1267 2200

In Reply Refer to:

EPA File No: 02r-20-R9

Glory Gervacio, Director,
U.S. Equal Employment Opportunity Commission
Honolulu Office
Prince Jonah Kuhio Kalanianaʻole Federal Building
300 Ala Moana Boulevard, Room 4-257
Honolulu, HI 96805

Re: Referral of Administrative Complaint

Dear Ms. Gervacio:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) is referring a complaint received January 9, 2020 from (b) (6) Privacy an employee of the Hawaii Department of Agriculture (HDOA). The complaint alleges that (b) (6) Privacy was retaliated against because of his participation in the investigation and resolution of a complaint filed under Title VI of the Civil Rights Act of 1964. (b) (6) Privacy also sent ECRCO an email alleging that he had been discriminated against based upon his race and/or national origin ("SE Asian, first generation Filipino"). For this reason, ECRCO is forwarding the complaint to you for processing.

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

With respect to the allegations of discrimination based on race/national origin ("SE Asian, first generation Filipino") against the HDOA, please note that ECRCO has limited jurisdiction over employment complaints (see 40 C.F.R. § 7.30 (a)(6).) As such, ECRCO must refer these claims to the EEOC. Federal regulations at 29 C.F.R. § 1691.5(c) state that "[a]n agency shall transfer to

EEOC a complaint of employment discrimination over which it does not have jurisdiction but over which EEOC may have jurisdiction within thirty days of receipt of a complaint.” As described in 29 C.F.R. §1691.5 “Agency processing of complaints of employment discrimination filed with an agency other than the EEOC,” at Section (c) “An agency shall transfer to EEOC a complaint of employment discrimination over which it does not have jurisdiction but over which EEOC may have jurisdiction within thirty days of receipt of a complaint.” Accordingly, as the EEOC may have jurisdiction over this matter, ECRCO is referring this complaint to the EEOC’s Honolulu office for appropriate action.

Thank you in advance for your assistance. If you have any questions about this correspondence, please contact Debra McGhee, at (202) 564-4646, by e-mail at mcghee.debra@epa.gov, or by mail at U.S. EPA External Civil Rights Compliance Office, (Mail Code 2310A), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.

Sincerely,



Lilian S. Dorka
Director
External Civil Rights Compliance Office
Office of General Counsel

Enclosures

cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

Deborah Jordan
Deputy Regional Administrator
US EPA Region 9

Sylvia Quast
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US EPA Region 9